Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

THOMAS L. MICKLER,

Petitioner,

v.

THE NIMISHILLEN & TUSCARAWAS RAILWAY COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

DEBORAH PURCELL GOSHIEN
Counsel of Record
Bernsteen & Bernsteen
55 Public Square - Suite 1325
Cleveland, Ohio 44113
Telephone: (216) 621-5435

Attorney for Petitioner

37pp

QUESTIONS PRESENTED FOR REVIEW

1) Are railroads previously classified as exempt now subject to jurisdiction under the Federal Employers' Liability Act?

2) Has Congress' stated declaration of purpose in 45 U.S.C. Sec. 421 and 434 to promote safety and uniformity in all areas of railroad operations and to reduce railroad related accidents, coupled with 1988 amendments specifically deleting the words "common carrier" and "interstate" wherever they appear in the Safety Appliance Act, covered the subject of railroad safety so as to pre-empt state actions and thus to confer jurisdiction under the Federal Employers' Liability Act for all railroad employees injured while on duty?

3) Is a private railroad licensed as a common carrier and servicing its parent company both inside plant grounds and on adjacent interstate exchange railroad tracks and carrying manufactured goods destined for out-of-state destinations now subject to FELA due to Congressional Amendments to the Federal Safety Appliance Act specifically and extensively deleting the words "common carrier" and "interstate" wherever these words appear?

4) Is it a denial of Petitioner's constitutional rights to due process and equal protection of the laws and an unjust result not intended by Congress to deny him FELA coverage previously afforded, when the portion of the railroad on which he worked was purchased by an intrastate company, yet

his job remained exactly the same and the locomotive on which he was working continued to be inspected by federal authorities pursuant to federal safety requirements?

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS

The Trial Court opinion is unreported.

The Sixth Circuit Opinion of December 23, 1993 is cited as **Thomas L. Mickler v. The Nimishillen & Tuscarawas Railway Company**, 13 F.3d 184 (CA-6 1993).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED

On December 23, 1993, the Sixth Circuit Court of Appeals entered judgment affirming the United States District Court's decision granting summary judgment to The Nimishillen & Tuscarawas Railway Company on the ground of lack of jurisdiction under the Federal Employers' Liability Act ("FELA").

The jurisdiction of this Court to review the opinion and judgment of the Sixth Circuit Court of Appeals is invoked under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States,

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States,

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States,

Article I, Section 8, Clause 3:

The Congress shall have Power to Lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States:

> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

STATUTES AND LEGISLATIVE HISTORY INVOLVED

45 U.S.C. Secs. 1 - 65, Secs. 421 - 444

4 U.S.C.C. & A.N.
Rail Safety Improvement Act of 1988
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(Set forth in Appendix)

STATEMENT OF THE CASE

Thomas L. Mickler originally worked for the Mahoning Valley Railway Company, an interstate common carrier, as an employee-operator, and continued in his same job when a portion of the track was sold to Republic Engineered Steel Company and became known as The Nimishillen and Tuscarawas Railway Company ("N & T") in November 1989. Petitioner was never informed that there were any changes in his status, and the federal inspectors regularly performed required inspections of the locomotive pursuant to federal safety requirements.

Petitioner suffered an on-duty injury on June 28, 1990, and he negotiated his FELA claim himself for

some months, during which time his physician was informed by letter from the railroad that the state workers' compensation law did not apply, and Petitioner was given advances of $20,000.00 on his claim, which he understood that he had to repay to the railroad upon settlement of his FELA claim. When Petitioner obtained an attorney, the railroad retaliated by cutting off advances, but the railroad continued to negotiate with Petitioner's attorney under FELA and offers and demands were made. When negotiations finally failed, the Petitioner filed his claim in U.S. District Court under FELA, and the railroad answered admitting FELA jurisdiction and that it was a common carrier railroad in interstate commerce. After initial pretrial, the railroad

amended its answer and filed for summary judgment, claiming it never came under FELA jurisdiction since its inception. A sworn affidavit of the railroad's Vice President was attached to the Motion, which Motion for Summary Judgment was granted by the Court based on the affidavit. The Court relied on the 1986 case of **Kieronski v. Wyandotte Terminal Rd. Co.**, 806 F.2d 107 (6th Cir. 1986) in finding the N & T to be an intrastate railroad not subject to FELA jurisdiction because Petitioner worked essentially for one company and on interstate exchange tracks adjacent to the company premises, even though the manufactured goods were destined eventually for out-of-state locations.

The Trial Court's decision granting summary judgment to the N & T Railroad was appealed to the Sixth Circuit Court of Appeals which affirmed the lower Court's decision on the basis of lack of jurisdiction under FELA, relying on the **Kieronski** case and refusing to read the June 22, 1988 Congressional amendments to 45 USC Sec. 1-43 in pari materia with the FELA, and failing to apply the pre-emption standards set forth in **Easterwood v. CSX**, 507 US ____ , 113 S.Ct. ____, 123 L.Ed.2d 387 (1993).

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

Petitioner, an employee of the Nimishillen & Tuscarawas Railway Company, a railroad licensed as an interstate carrier, originally sought damages for personal injury under the Federal Employers' Liability Act, and Defendant's original Answer acknowledged proper jurisdiction under the Act in the United States District Court for the Northern District of Ohio, Eastern Division.

ARGUMENT

Article 1, Section 8, Clause 3 of the United States Constitution provides that Congress shall have the power "[t]o regulate commerce with foreign Nations and among the several States, and the Indian Tribes." It is well settled that pursuant to this provision Congress may regulate wholly intrastate activity that has an effect on interstate commerce. Hodel v. Virginia Surface Mining & Reclamation Association, 452 U.S. 264, 277, 101 S.Ct. 2352, 2360, 69 L.Ed.2d 1 (1981); Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942); United States v. Wrightwood Dairy Co., 315 U.S. 110, 62 S.Ct. 523, 86 L.Ed., 726 (1942).

Prior to June 22, 1988, the Federal Safety Appliance Acts were applicable to all common carriers by railroad in the United States engaged in interstate commerce, and to all such carriers in the District of Columbia and the territories, and placed a duty upon them to install and maintain safety equipment and keep it in working order. Failure of the carrier to comply resulting in injury to an employee established a right of action under the Federal Employers' Liability Act. O'Donnell v. Elgin, J. & E.R. Co., 338 U.S. 384, 70 S.Ct. 200, 94 L.Ed. 187, 16 A.L.R.2d 646 (1950), rehearing denied 338 U.S. 945, 70 S.Ct. 427, 94 L.Ed. 583; Carter v. Atlanta & St. Andrews Bay R. Co., 338 U.S. 430, 70 S.Ct. 226, 94 L.Ed. 236 (1949).

On June 22, 1988, the words "common carrier" and "interstate" were deleted wherever they appear in the entire Act, making the Act apply to all railroads.

The FELA (45 U.S.C. Sec. 51-60) and the Federal Safety Appliance Act (45 U.S.C. Sec. 1-16) are in pari materia, and cannot be regarded as separate from or independent of each other. **Urie v. Thompson**, 337 US 163, 93 L.Ed. 1282, 69 S.Ct. 1018, 11 ALR.2d 252 (1949); **San Antonio & A.P.R. Co. v. Wagner**, 241 US 476, 60 L.Ed. 1110, 36 S.Ct. 626 (1916); **Moore v. Chesapeake & O.R. Co.**, 291 US 205, 78 L.Ed. 755, 54 S.Ct. 402 (1934).

See also **McCarthy v. Penn R. Co.**, 156 F.2d 877, 879 (CA-7, 1946).

The object of the Safety Appliance Act is remedial and

humanitarian in its purpose, to protect lives and limbs of railroad employees, and is not to be construed as narrowly as to defeat the obvious intent of the legislature. United States v. Illinois C.R. Co., 177 F 801 (CA6-1910).

Congress had the reasonable expectation when it made the 1988 amendments that the Courts will honor the public policy to provide FELA coverage to the extent of Congress's ability to regulate and upon the Court's precedent of interpreting FELA in pari materia with the Federal Safety Appliance Act.

The FELA can no longer be constitutionally applied only to interstate common carriers because to do so constitutes an unreasonable classification under these recent enactments.

Thus, the 1986 **Kieronski** case, cited above, relied on by the trial court and the Sixth Circuit Court of Appeals herein, which was decided before the 1988 amendments is no longer good law, and summary judgment was absolutely improper and based on an erroneous standard. **Kieronski v. Wyandotte**, 806 F.2d 107 (1986) demanded that an intrastate railroad be exempted from FELA and required that wholly-owned railroads owned by a steel company and operating for the benefit of one company within a state on its own and adjacent interstate exchange tracks be excluded from FELA coverage -- by a judicially crafted and contrived exception to FELA.

The Congressional Acts of June 22, 1988, substituting "railroad" for "common carrier" and deleting "in

interstate or foreign traffic" following "any car or vehicle" wherever appearing effectively overruled the 1986 standard on which the lower Court's decision was based, and corrected the need for contrived distinctions. See also Easterwood v. CSX, 507 US ___ , 113 S.Ct. __ , 123 L.Ed.2d 387 (1993), and CSX Transp. Inc. v. Public Utilities Commission of Ohio, 901 F.2d 497 (CA-6, 1990) in regard to other matters of railroad safety also recently being pre-empted by federal law.

The only appropriate and reasonable constitutional interpretation in light of the amendments is to include intrastate activities.

45 U.S.C. Sec. 434 reads that "laws, rules, regulations, orders and standards relating to railroad safety

shall be nationally uniform to the extent practicable."

Liberal construction of FELA is necessary in order to carry out legislative purpose and intent. **Jamison v. Encarnacion**, 281 US 635, 74 L.Ed. 1082, 50 S.Ct. 440 (1930).

Congressional policy has extended the federal safety regulations in order to attain a national uniform system with regard to railroad safety and consequently FELA coverage is extended by necessary judicial interpretation to all railroad employees in circumstances similar to that of Petitioner's. The U.S. Supreme Court is making improper and incorrect law if the within decision is permitted to stand.

"If the statute contains an express pre-emption clause, the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." Easterwood v. CSX, 507 US ___ , 113 S.Ct. ___ , 123 L.Ed.2d 387 (1993) at p. 396.

The new June 22, 1988 Congressional amendments clearly intend to "cover the subject" of locomotive safety, as defined at p. 397 of Easterwood, cited above.

There is not only clear Congressional intent to regulate here, but an intolerable conflict between the previously appropriate judicial exclusions culminating in the Kieronski case in 1986, and the now clearly

inappropriate judicial exclusions manifested in the incorrect 1993 **Mickler** decision in the Sixth Circuit which absolutely ignored the intent of the 1988 specific Congressional amendments and the U.S. Supreme Court decisions permitting the regulation of intrastate commerce with respect to railroads.

As has been recognized in **Parden v. Terminal R. of Alabama Docks Dept.**, 377 US 184, 12 L.Ed.2d 233, 84 S.Ct. 1207 reh. den. 377 US 1010, 12 L.Ed.2d 1057, 84 S.Ct. 1903 (1964), cited affirmatively in **Hilton v. S C Pub. R. Com.**, 116 L.Ed.2d 560 (1991), Congress intended to act as fully as it could in respect to safety. And so it has! And therefore the judiciary must follow its long established and recognized practice of following

Congressional intent.

The Sixth Circuit, in ruling as it has herein is denying Easterwood's premise and creating confusion and will create an effect opposite of that intended by Easterwood, and opposite of the stated Congressional intent in the June 22, 1988 amendments to 45 U.S.C. Sections 1-43 which clearly intended sweeping changes, for there would be no need to substitute "railroad" for "common carrier" and to delete the word "interstate" if Congress intended no change, because the SAA and BIA already applied to interstate common carriers.

Moreover, to pretend that a railroad employee's job which has never changed, is suddenly no longer covered under FELA because an Ohio corporation licensed as a common carrier purchased a

section of the line, defies the safety purposes for which the FELA was enacted and the stated intent of the 1988 amendments.

Defendant railroad was dismissed herein because of the exception that it is not a common carrier, a judicial classification that heretofore has been held constitutional in early cases, and through the 1986 **Kieronski** case relied on herein by the Sixth Circuit, but when applied now leads to gross injustice. **Second Employers' Liability cases**, 223 US 1, 56 L.Ed. 327, 32 S.Ct. 169 (1912); **Brooks v. Southern P. Co.**, 148 F 986, aff'd 207 US 463, 52 L.Ed. 297, 28 S.Ct. 141 (1906).

This issue is ripe, and a decision herein clarifying the status of railroad employees injured due to

defective locomotives under the 1988 Congressional Acts is necessary for uniform application of the laws and to avoid unnecessary litigation.

The U.S. Supreme Court determined in **Parden v. Terminal Railway of Alabama Docks Dept.**, 377 US 184, 12 L.Ed.2d 233, 84 S.Ct. 1207 reh den. 377 US 1010, 12 L.Ed.2d 1057, 84 S.Ct. 1903 (1964), and **Hilton v. S C Pub. R. Com.**, 116 L. Ed.2d 560 (1991) that Congressional intent should be broadened to include implications intended by the legislature, and acknowledged that Congress remains able to make alterations, acknowledging the importance of stare decisis but expressing a willingness to depart for a compelling reason.

Such compelling reason exists here and now and is an expressed change in Congressional intent which has resulted in a compelling need for judicial re-interpretation of its standards in regard to traditional judicial exemptions carved out of FELA cases.

The case discussion itself and the strong dissent in the recent Ohio Supreme Court case of **In re: Miamisburg Train Derailment**, 68 OS.3d 255 (2-9-94), 258, 268 further demonstrates the confusion in the Courts' attempts to apply the **Easterwood** rationale, **Easterwood v. CSX Transp. Corp. v. Easterwood**, 507 US ___, 113 S.Ct. ___ , 123 L.Ed.2d 387 (1993), and confusion in determining congressional intent. There is a compelling need for guidance herein

from the U.S. Supreme Court in a situation that involves thousands of railroad employees but is distinguishable from **Easterwood**, which does not reach the issue of injury to railroad employees.

The original intent of the FELA was to apply as widely as possible. The original intent should now be reapplied and the other cases shed like the skin of a snake.

If the case is allowed to stand, Mickler and thousands of other railroaders injured by unsafe appliances and locomotives which are subject to federal inspection, will be without a remedy under the very laws which were passed for such employees' protection.

The U.S. Supreme Court has found it necessary on many occasions to re-interpret judicial decisions based on

changing congressional intent and the needs of justice, including in the **Parden** case, cited above, found broad language and purpose in the FELA sufficient to encompass a small terminal railroad, and found no intent to exclude particular classes of railroad workers from the Act, which would effectively create a right without a remedy, stating at p. 238, "We are unwilling to conclude that Congress intended so pointless and frustrating a result." and found that where Congress gave no indication that it desired to be hindered in the exercise of its constitutional power, there is nothing in the Constitution to obstruct its will (p. 243).

The will of Congress to protect railroad employees working on equipment subject to Federal inspections and standards should not be thwarted.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Order of the Sixth Circuit.

Respectfully submitted,

DEBORAH PURCELL GOSHIEN
Counsel of Record
Bernsteen & Bernsteen
55 Public Square
Suite 1325
Cleveland, Ohio 44113
Telephone: (216) 621-5435

Attorney for Petitioner,
Thomas L. Mickler

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DEBORAH PURCELL GOSHIEN
Counsel of Record
Bernsteen & Bernsteen
55 Public Square - Suite 1325
Cleveland, Ohio 44113
Telephone: (216) 621-5435

Attorney for Petitioner

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Sixth Circuit Judgment
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Trial Court Memorandum of Opinion
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Motion for Summary Judgment
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Trial Court Judgment Entry
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RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

Nos. 92-3740/4047

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS L. MICKLER,

Plaintiff-Appellant,

v.

THE NIMISHILLEN AND TUSCARAWAS RAILWAY COMPANY,

Defendant-Appellee.

ON APPEAL from the United States District Court for the Northern District of Ohio

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Decided and Filed December 23, 1993

Before: KENNEDY and NORRIS, Circuit Judges; and LIVELY, Senior Circuit Judge.

KENNEDY, Circuit Judge. Plaintiff Thomas L. Mickler appeals the District Court's grant of summary judgment in favor of his employer, Nimishillen &

Tuscarawas Railway Company (92-3740). Plaintiff also appeals a magistrate judge's order denying plaintiff's motion to vacate the summary judgment, to re-open discovery, and to indicate a willingness to accept remand of the case (92-4047). Plaintiff argues that the District Court erred in holding that defendant is not a common carrier engaged in interstate commerce and thus not subject to the Federal Employer's Liability Act ("FELA"), 45 U.S.C. §§ 51 et seq. He further asserts that even if defendant is not a common carrier, recent amendments to the Boiler Inspection Act ("BIA"), 45 U.S.C. §§ 22 et. seq., and the Safety Appliance Act ("SAA"), 45 U.S.C. § 11 make FELA

applicable to defendant; and that defendant is estopped from denying it is subject to FELA. For the reasons stated below, we affirm the District Court's grant of summary judgment. The magistrate judge's order is not a final judgment of the District Court and is not appealable. Thus, Appeal No. 92-4047 will be dismissed.

I.

Plaintiff's Complaint alleged that he was employed by defendant as a trainman, brakeman, and engineer when, while at work,he fell "from a wet, slick, newly and improperly painted locomotive, covered with oil and rain and grease," causing him to seriously injure his left shoulder and teeth. The Complaint further alleged that the accident was caused by defendant's negligence in

failing to provide a safe workplace, in violation of FELA, the BIA, and the SAA.

Defendant answered the Complaint on January 28, 1992, in which it admitted to jurisdiction as a railroad carrier. On February 13, 1992, within the time permitted to amend without leave of the court, defendant amended its Answer so as to deny jurisdiction under FELA on the ground that it is not a railroad common carrier. On March 25, 1992, defendant moved for summary judgment on that ground.

On June 18, 1992, the District court granted defendant's motion for summary judgment. The court's memorandum found that the following facts were undisputed. Defendant is a wholly-owned subsidiary of Republic Engineered Steel, Inc. ("Republic"). Defendant only transports

materials and products for Republic. Defendant does not advertise or sell its services to any other businesses. It only operates within the premises of Republic's plant and on adjacent interchange tracks which are owned by Consolidated Rail Corporation, Wheeling and Lake Erie Railroad, and R.J. Corman Railroad Co. Defendant transports shipments between common carrier railroads and the Republic plant. The shipments contain products and materials coming into Republic's plan and leaving the plant for out-of-state locations. The court granted defendant's motion for summary judgment on June 22, 1992, on the ground that defendant is not a common carrier under FELA but rather an in-plant carrier. The court also found no evidence that defendant had held itself

out as a common carrier and therefore is not estopped from defending on the ground that it is not a common carrier.

On July 17, 1992, plaintiff timely appealed the order granting summary judgment. On the same day, he filed a combined motion with the District Court to vacate the grant of summary judgment pursuant to Fed. R. Civ. P. 60(b) and motion to re-open discovery, on the ground of newly discovered evidence. On September 3, 1992, plaintiff requested the District Court to indicate a willingness to accept remand of the case from the Court of Appeals in order to rule on the motions to vacate and to re-open discovery. The magistrate judgment issued a "Memorandum and Order" denying plaintiff's motions. On October 8, 1992,

plaintiff appealed the magistrate judge's order.

II.

The grant of summary judgment by a district court is subject to de novo review. Jones v. Tenn. Valley Authority, 948 F.2d 258 261 (6th Cir. 1991). Summary judgment is only appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Where, looking to the record as a whole, a reasonable mind could come to only one conclusion, there is no genuine issue of material fact and summary judgment is appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FELA provides in pertinent part:

> Every **common carrier by railroad** while engaging in commerce between any of the several States or Territories, ... shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, ... for such injury ... resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, ... or other equipment.

45 U.S.C. § 51 (emphasis added).

Plaintiff argues that defendant is a "common carrier by railroad" and is therefore liable to plaintiff under FELA for plaintiff's injuries allegedly caused by defendant's negligence. The trial court held that defendant is not a common carrier and is therefore not subject to FELA.

This Court has defined common carrier, as used by FELA, as

> one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and hence is regarded in some respects as a public servant.

Kieronski v. Wyandotte Terminal Railroad Co., 806 F.2d 107, 108 (6th Cir. 1986) (quoting Kelly v. General Electric Co., 110 F. Supp. 4, 6 (E.D. Pa.), aff'd, 204 F.2d 692 (3d Cir.), cert. denied, 346 U.S. 886 (1953)). Kieronski noted several types of carriers including (1) in-plant carriers, which transport products within a particular business and may be connected to common carriers; (2) private carriers, who haul for others, but only pursuant to individual contracts

entered into separately with each customer; (3) linking carriers, which link two or more common carriers; and (4) mixed function carriers, which perform both as in-plant carriers and common carriers. 806 F.2d at 109. In-plant and private carriers are generally not considered to be common carriers but linking and mixed-function carriers are considered common carriers because they are part of the common carrier system providing rail service to the public.

In this case, defendant supported its motion for summary judgment with the affidavit of its vice-president of operations, James T. Winterfeld. The affidavit set forth facts supporting defendant's claim that it is not a common carrier but rather an in-plant carrier. The affidavit states that defendant is a

wholly-owned subsidiary of Republic; that defendant is licensed as a common carrier but provides transportation services exclusively for Republic; that defendant does not advertise a service for any business other than Republic nor receive any remuneration for service except from Republic; that defendant operates only within Republic's plant premises except to use common carrier tracks adjacent to the plant for transferring Republic shipments from the plant to the common carrier railroads; that defendant owns no track outside Republic's premises nor has any agreement with any common carrier except for the aforesaid interchange operations. These facts support defendant's claim that it is an in-plant carrier and not a common carrier.

Once the moving party has made and supported its motion for summary judgment, "the adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Plaintiff opposed defendant's motion with his own affidavit, an affidavit by plaintiff's local union president, John McGarry, and copies of various letters, memoranda, and other documents. These papers show that plaintiff was an employee of defendant and that plaintiff was covered by railroad retirement. They further indicate that defendant was licensed to

operate as a common carrier, that products were shipped by Republic to other states and that employees of defendant worked outside Republic's yard. Plaintiff's affidavit also states that

> [t]he Railroad was not used solely to load and unload goods purchased and used by the steel company, and **that Defendant is a linking carrier** and a vital part of the interstate commerce system because goods and alloys destined for other states from the steel company were sent out from this location by the linking system of tracks used by the Railroad crews which were permitted to work outside the yard and on Conrail facilities such as I was permitted to do.

These facts, assuming for summary judgment that they can be proved, do not create an issue of material fact for trial. The question is not whether defendant is licensed as a common carrier but whether defendant offers or provides common carrier services. Also, defendant

may have acted under a mistaken belief that it was a common carrier and accordingly provided certain retirement benefits and submitted to federal inspections but it is not a common carrier unless it provided services for other common carriers or the public. Plaintiff's papers provided no evidence that defendant had held itself out to the public or any other businesses as a common carrier, nor that defendant provided any service for or received any compensation from any business other than Republic. Although plaintiff did allege that defendant was a "linking carrier" and "was not used solely to load and unload goods purchased and used by the steel company," plaintiff based these assertions on the fact that defendant transports products for out-of-state

destinations and operates on tracks that link to Conrail. These facts do not, however, bring defendant under FELA. Although engaging in interstate commerce is a prerequisite for FELA liability, it is a separate question from whether a railroad is a common carrier. Also, linking to common carriers does not make defendant a "linking carrier" under Kieronski. A linking carrier is a railroad that links common carriers to one another not one that links a private business to a common carrier. See Kieronski, 806 F.2d at 109 ("An in-plant system does not become a common carrier merely by being connected to a common carrier, because such a connection is a common feature of in-plant systems."). If plaintiff's allegations were based on

something more than the reason recited, then they lacked the specificity required to oppose a motion for summary judgment. See Fed. R. Civ. P. 56(e). Thus, defendant's claim that it is not a common carrier is not in genuine dispute. Defendant is not subject to FELA as a common carrier.

III.

Plaintiff's second contention is that, even if defendant is not a common carrier, it is nonetheless subject to FELA in light of recent amendments to the BIA and the SAA.[1] These Acts impose

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[1] The District Court also addressed plaintiff's argument that the BIA and SAA independently provide a cause of action without regard to FELA. The District Court held that a railroad employee suit for violations of BIA and SAA could only be brought through FELA and that BIA and SAA only serve as standards of negligence per se for purposes of FELA liability. This issue is not argued on appeal.

duties on railroads to comply with various safety standards. In 1988, Congress amended these Acts substituting "railroad" for "common carrier" and "carrier" throughout the SAA and BIA.[2] Plaintiff argues that the BIA and SAA should be read **in pari materia** with FELA to extend FELA to all circumstances where the BIA or SAA apply.

The SAA and BIA are railroad safety laws, the enforcement provisions of which create civil penalties and charge the Department of Transportation through the

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[2]Congress amended several railway safety acts by the Railway Improvement Act of 1988, Pub. L. No. 100-342, 102 Stat. 631 (1988). For the legislative history and purpose of the Act, see 1988 U.S.C.C.A.N. 695.

Federal Railroad Administration (FRA) with responsibility for their enforcement. By the Act of 1988, Congress broadened federal jurisdiction over railroad safety to include railroads that are neither common carriers nor engaged in interstate commerce. The purpose of the Act was to continue and expand federal regulation of railroad safety. The apparent purpose for substituting "railroad" for "common carrier" in the safety acts was to provide uniformity in the safety requirements of all railroads and to subject all railroads to the injunctive, inspection and penalty powers of the FRA. See House Conf. Rep. No. 100-637, cited in 1988 U.S.C.C.A.N. at 716. The Act also expanded the reach of the FRA's enforcement power to individual railroad

employees, managers, supervisors and officials. See House Conf. Rep. No. 100 637, cited in 1988 U.S.C.C.A.N. at 709.

These amendments, however, were limited to the statutory provisions outlining safety standards and the procedures by which the FRA would enforce these standards. Congress did not amend FELA, which creates a tort remedy for railroad employees injured as a result of the negligence of their employers. FELA continues to apply only to common carriers engaging in interstate commerce. See 45 U.S.C. § 51. Although courts have read FELA **in pari materia** with the BIA and SAA, they have only referred to the latter safety laws as a negligence standard for the application of FELA.

See, e.g., McCarthy v. Pennsylvania, 156 F.2d 877, 879 (7th Cir. 1946). A violation of BIA or SAA is negligence per se under FELA. Urie v. Thompson, 337 U.S. 163, 188-89 (1949); Green v. River Terminal Railway Co., 763 F.2d 805, 810 (6th Cir. 1985); McCarthy, 156 F.2d at 879 (citing San Antonio & Arkansas Pass R. Co. v. Wagner, 241 U.S. 476, 484 (1916)). FELA, by its terms, has always applied only to common carriers engaged in interstate commerce. Plaintiff has presented no authority in the statute, legislative history, or precedent that suggests that Congress intended to expand the class of railroads liable for employee injuries under FELA. In fact, the Senate Report on the 1988 amendments states that "this legislation authorizes

the FRA to take direct enforcement action against individuals, as well as railroad companies. **It would not otherwise affect private proceedings as between railroads and their employees.**" Sen. Rep. No.100-153 § 3, cited in 1988 U.S.C.C.A.N. at 701 (emphasis added). Absent clear congressional intent or an intolerable conflict between the 1988 amendments and FELA, we will not expand FELA beyond the reach of its plain language. FELA only applies to common carriers and therefore does not apply to defendant.

IV.

Plaintiff's third challenge to the trial court's grant of summary judgment is based on estoppel. Plaintiff contends that defendant represented itself to plaintiff as a common carrier and plaintiff detrimentally relied on such

representation. Plaintiff argues that defendant should be estopped from denying it is a common carrier and therefore should be deemed as such for purposes of FELA liability. The trial court denied this claim on the ground that plaintiff has presented no evidence that defendant represented itself to plaintiff as a common carrier.

This Court has no jurisdiction over plaintiff's estoppel claim. The sole basis for federal jurisdiction in this case is FELA. Because defendant is not a

common carrier and FELA does not apply, there is no federal question. Even if plaintiff could establish the elements of estoppel, we would still have no jurisdiction.[3] Federal jurisdiction simply cannot be conferred by estoppel. Franzel v. Kerr Mfg. Co., 959 F.2d 628, 630 (6th Cir. 1992) (citing American Fire & Casualty Co. v. Finn, 341 U.S. 6 (1951)) (principles of estoppel may not be used to confer subject-matter jurisdiction on a court that would

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[3] We note that even if defendant were estopped from denying it was a common carrier, summary judgment would be proper. Plaintiff has the burden of proving defendant is a common carrier and therefore must present affirmative evidence indicating such. Because plaintiff has not presented any such evidence, his claim would fail, even if defendant were estopped from presenting evidence that it is not a common carrier.

otherwise lack it); **Wooten v. United States**, 825 F.2d 1039, 1045 (6th Cir. 1987) (citing **Owen Equip. and Erection Co. v. Kroger**, 437 U.S. 365, 377 n.21 (1978)) ("Since federal courts are courts of limited jurisdiction, jurisdiction that is otherwise lacking cannot be conferred by consent, collusion, laches, waiver, or estoppel."); **Mahoney v. Northwestern Bell Tel. Co.**, 377 F.2d 549, 549 (8th Cir. 1967) ("It is ... well established that jurisdiction cannot be acquired by estoppel."); **Poole v. Lykes Bros. Steamship Co.**, 273 F.2d 423, 423 (5th Cir. 1960) (no conferring of jurisdiction by estoppel); **In re Federal Facilities Realty Trust**, 227 F.2d 651, 656 (7th Cir. 1955) ("[J]urisdiction can never be created by estoppel. ...").

Therefore, plaintiff's estoppel claim must be dismissed.

V.

Finally, plaintiff appeals from the denial of his motion to vacate the summary judgment pursuant to Fed. R. Civ. P. 60(b) and motion to re-open the case for discovery. This appeal is not properly before us. The order denying plaintiff's motions was issued by a magistrate judge and not a judge. Decisions and orders of magistrate judges are directly appealable to this Court under only limited circumstances, none of them applicable here. Although neither party raised this issue on appeal, this Court must raise the matter **sua sponte** because it goes to the issue

of subject-matter jurisdiction. Bennett v. General Caster Service of N. Gordon Co., 976 F.2d 995, 997 (6th Cir. 1992) (citing Ambrose v. Welch, 729 F.2d 1084, 1085 (6th Cir. 1984)). Therefore, the magistrate judge lacked jurisdiction to enter a final order. The order entered is not appealable. Accordingly, the appeal (92-4047) is dismissed.

VI.

For the reasons stated above, the order granting summary judgment is **AFFIRMED** and the appeal from the magistrate judge's order denying plaintiff's motions to vacate judgment and re-open discovery is dismissed.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
DEC 23 1993
LEONARD GREEN, Clerk

Nos: 92-3740: 92-4047

THOMAS L. MICKLER,

Plaintiff-Appellant,

v.

NIMISHILLEN AND TUSCARAWAS RAILWAY COMPANY,

Defendant-Appellee.

Before: Kennedy and Norris, Circuit Judges; and Lively, Senior Circuit Judge

JUDGMENT

ON APPEAL from the United States District Court for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ORDERED that the order of the district

court granting summary judgment is AFFIRMED. IT IS FURTHER ORDERED that the order denying plaintiff's motions to vacate judgment and re-open discovery is DISMISSED.

ENTERED BY ORDER OF THE COURT

_____
Leonard Green, Clerk

Issued as Mandate: January 21, 1994

A True Copy

COSTS: None

Attest:

Filing Fee ..... $
Printing ..... $
Total ..... $

_____
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS L. MICKLER	)	SENIOR JUDGE
	)	ALVIN I. KRENZLER
Plaintiff	)	
	)	CASE NO. 1:92CV0053
-vs-	)	
	)	**MEMORANDUM OF**
THE NIMISHILLEN AND	)	**OPINION AND ORDER**
TUSCARAWAS RAILWAY	)	**GRANTING**
COMPANY	)	**DEFENDANT'S MOTION**
	)	**FOR SUMMARY**
	)	**JUDGMENT**

This case is before this Court on the motion for summary judgment filed by defendant, the Nimishillen and Tuscarawas Railway Company ("N & T").

The complaint in this case alleges that plaintiff, Thomas L. Mickler, was employed by N & T as a trainman, engineer, and brakeman. According to the complaint, while plaintiff was at work, he fell "from a wet, slick, newly and improperly painted

locomotive, covered with oil and rain and grease," resulting in injuries to his teeth and left shoulder. The complaint asserts that N & T was negligent and failed to provide plaintiff with a safe place to work, in violation of the Federal Employer's Liability Act ("FELA"), 45 U.S.C. §§ 51 et seq., the Federal Boiler Inspection Act, 45 U.S.C. §§ 22 et seq., and the Federal Safety Appliance Act, 45 U.S.C. § 11.

The complaint contends that as a result of his injuries, plaintiff has suffered permanent physical limitations, mental suffering and loss of enjoyment of life. The complaint further contends that plaintiff's injuries require on-going medical attention, and have caused him to lose wages. The complaint seeks damages in the amount of $4,000.00 and costs.

N & T originally filed an answer in which it denied the essential allegations of the complaint but admitted that it was a railroad carrier engaged in interstate commerce. However, N & T subsequently filed an amended answer in which it denied that it was "engaged in interstate commerce as a railroad carrier," and asserted that it was not subject to the FELA, the Safety Appliance Act or the Boiler Inspection Act.

N & T now moves for summary judgment on the ground that it is not a "common carrier by railroad," and is therefore not subject to liability under the FELA. In opposition to N & T's motion, plaintiff claims that N & T is estopped from denying that it is a common carrier by railroad. Plaintiff also argues that N & T is subject to liability

for violations of the Boiler Inspection Act and the Safety Appliance Act.

The Court finds that there are no genuine issues as to any material fact. The Court finds that N & T is not subject to liability under the FELA because it is an in-plant rail carrier, not a common carrier. The Court further finds that N & T is not estopped from defending this action on the ground that it is not a common carrier. Finally, although the Boiler Inspection Act and the Safety Appliance Act impose duties on "railroads," and are not limited to "common carriers by railroad" like the FELA, violations of those statutes only constitute negligence per se under the FELA; there is no separate cause of action for violation of the Boiler Inspection Act and the Safety Appliance

Act apart from the FELA. Therefore, N & T is entitled to judgment as a matter of law.

FACTUAL BACKGROUND

In support of its motion for summary judgment, N & T submitted the affidavit of its vice president of operations, James T. Winterfeld. In opposition to N & T's motion, plaintiff has submitted his own affidavit and the affidavit of his local union's president, John McGarry, as well as copies of various letters, memoranda, and other documents. Taken together, these materials disclose the following facts.

N & T is a wholly-owned subsidiary of Republic Engineered Steel, Inc. ("Republic"). Although N & T is permitted to operate as a common carrier, it only transports goods, materials and

products for Republic; it does not advertise or sell its services to any other business. N & T only operates within the premises of Republic's plant and on interchange tracks adjacent to the plant which are owned by Consolidated Rail Corporation, Wheeling & Lake Erie Railroad, and R.J. Coreman Railroad Co. N & T transports shipments between common carrier railroads and the Republic plant, moving materials and goods into the Republic plant, and moving products out of the Republic plant which are destined for out-of-state locations.

LIABILITY OF N & T UNDER THE FELA

The FELA, 45 U.S.C. § 51, provides in pertinent part:

> Every common carrier by railroad while engaging in commerce between any of the several States or Territories, ... shall be

> liable in damages to any person suffering injury while he is employed by such carrier in such commerce, ... for such injury ... resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, ... or other equipment. (Emphasis added.)

The only persons liable under the FELA are "common carriers by railroad." A common carrier by railroad has been defined as:

> one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally. The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and hence is regarded in some respects as a public servant.

Kieronski v. Wyandotte Terminal Railroad Co., 806 F.2d 107, 108 (6th Cir. 1986) (quoting Kelly v. General Electric Co., 110 F.Supp. 4, 6 (E.D. Pa. 1953)).

In Kieronski, the Sixth Circuit noted that there are several different categories of "carriers." These include (1) in-plant rail facilities, which haul goods and materials within a particular business, although they are usually connected to a common carrier, (2) private carriers, who "haul for others, but only pursuant to individual contracts, entered into separately with each customer," (3) linking carriers, which link two or more common carriers, and (4) mixed-function carriers, which serves both in-plant functions and common carrier functions. Kieronski, 806 F.2d at 109. In-plant facilities and private

carriers, because they do not purport to act for the public. On the other hand, linking carriers and mixed-function carriers are considered to be common carriers, because they are part of the common carrier system providing rail service to the public. Id.

In this case, the evidence shows that N & T is an in-plant carrier. N & T is wholly owned by Republic. It operates primarily within the Republic plant. Although it carriers goods between the Republic plant and interchange tracks belonging to common carriers, it does so only to transfer shipments between the common carrier railroads and Republic. This is a typical activity for an in-plant system. Kieronski, 806 F.2d at 109. There is no evidence that N & T serves any "linking"

function between the common carrier railroads, or that it performs any of the functions that the common carrier railroads were hired to perform by their customers. N & T transports goods only for Republic, and is compensated only by Republic; it performs nc services and receives no remuneration from any other source. Therefore, the Court finds that N & T is an in-plant rail facility, not a common carrier by railroad. As an in-plant rail facility, N & T is not subject to liablity under the FELA.

Plaintiff argues that N & T is estopped from denying that it is a common carrier by railroad. To prove estoppel, plaintiff must show that (1) N & T made a material misrepresentation of fact, (2) N & T knew the true facts, (3) N & T intended for plaintiff to rely upon its

misrepresentation, (4) plaintiff was unaware of the true facts, and (5) plaintiff justifiably relied upon the misrepresentation to his detriment. See, e.g., Apponi v. Sunshine Biscuit, Inc., 809 F.2d 1210, 1215 (6th Cir. 1987).

Here, there is no evidence that N & T represented itself to be a common carrier. Plaintiff has submitted several unidentified and unauthenticated letters and memoranda in which N & T states that it is a "railroad." However, N & T does not deny that it is a railroad; it denies that it is a common carrier. N & T does not represent itself to be a common carrier in any of the documents submitted by plaintiff. Furthermore, although N & T's initial answer to the complaint admitted that it was a "railroad carrier," N & T amended its answer to

deny this allegation and to deny that it was subject to liability under the FELA within the time it was permitted to amend without leave of court under Fed. R. Civ. P. 15(a). Therefore, the documents submitted by plaintiff do not demonstrate any misrepresentation by N & T, and N & T is not estopped from defending this action on the ground that it is not a common carrier.

Plaintiff finally asserts that, even if N & T is not subject to liability under the FELA, N & T may still be held liable to him under the Boiler Inspection Act and the Safety Appliance Act. The Boiler Inspection Act and the Safety Appliance Act both impose duties on "railroads;" they are not limited to common carriers by railroad like the FELA. The Safety Appliance Act makes it

unlawful for a railroad to haul a car on its line which is not equipped with certain safety equipment. 45 U.S.C. §11. The Boiler Inspection Act similarly makes it unlawful for a railroad to use any locomotive on its line which is not in proper condition and safe to operate. 45 U.S.C. § 22.

Although they impose duties on railroads, neither the Boiler Inspection Act nor the Safety Appliance Act confers any right of action upon an injured employee. Urie v. Thompson, 337 U.S. 163, 188 (1949). Thus, plaintiff has no direct claim against N & T under these two statutes. Rather, a claim for violation of the Boiler Inspection Act or the Safety Appliance Act may be prosecuted as an action for negligence per se under the FELA. Urie, 337 U.S. at

188-89; Green v. River Terminal Railway Co., 763 F.2d 805, 810 (6th Cir. 1985). As noted above, however, the only persons liable under the FELA are common carriers by railroad. Because N & T is not a common carrier, it cannot be held liable to plaintiff under the FELA.

CONCLUSION

The Court finds that there are no genuine issues as to any material fact. N & T is not a common carrier which can be held liable to plaintiff under the FELA. Therefore, N & T is entitled to judgment as a matter of law. Accordingly, the Court will enter judgment in favor of N & T on plaintiff's complaint.

/s/ Alvin J. Krenzler
UNITED STATES SENIOR DISTRICT JUDGE

Deborah P. Goshien
Philip Howes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS L. MICKLER	)	SENIOR JUDGE
	)	ALVIN I. KRENZLER
Plaintiff	)	
	)	CASE NO. 1:92CV0053
-vs-	)	
	)	
THE NIMISHILLEN AND TUSCARAWAS RAILWAY COMPANY	)	
	)	
Defendant	)	**JUDGMENT ENTRY**

This Court, having previously entered its Memorandum of Opinion and Order Granting Defendant's Motion for Summary Judgment, hereby enters judgment for defendant, the Nimishillen and Tuscarawas Railway Company, and against the plaintiff, Thomas L. Mickler, on all of plaintiff's claims. Plaintiff to pay costs.

/s/ Alvin J. Krenzler
UNITED STATES SENIOR DISTRICT JUDGE

Deborah P. Goshien
Philip Howes

UNITED STATES CODE

1988 EDITION

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VOLUME EIGHTEEN

TITLE 43 – PUBLIC LANDS

TO

TITLE 47 – TELEGRAPHS, TELEPHONES, AND
RADIOTELEGRAPHS

UNITED STATES
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CHAPTER 1–SAFETY APPLIANCES AND EQUIPMENT ON RAILROAD ENGINES AND CARS, AND PROTECTION OF EMPLOYEES AND TRAVELERS

Sec.

1. Driving-wheel brakes and appliances for operating train-brake system
2. Automatic couplers.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 section 751.

§ 1. Driving-wheel brakes and appliances for operating train-brake system

It shall be unlawful for any railroad to use on its line any locomotive engine not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

(Mar.2, 1893, ch. 196 § 1, 27 Stat. 531; June 22, 1988, Pub. L. 100-342, § 13(1)(A), 102 Stat. 630.)

AMENDMENTS

1988-Pub. L. 100-342 struck out "common carrier engaged in interstate commerce by" before, "railroad", "in moving interstate traffic" after "locomotive engine", and "in such traffic" after "any train".

SHORT TITLE

The following acts are popularly known as Boiler Inspection Acts:

Feb. 17, 1911, ch. 103, 36 Stat. 913. See section 22 to 29 and 31 to 34 of this title.

Mar. 4, 1915, ch. 169, 38 Stat. 1192. See sections 23 and 30 of this title.

June 26, 1918, ch. 105, 40 Stat. 616. See sections 24 and 26 of this title.

June 7, 1924, ch. 355, 43 Stat. 659. See sections 22 to 24 and 27 of this title.

Apr. 22, 1940, ch. 124, 54 Stat. 148. See sections 24 to 34 of this title.

The following acts are popularly known as Safety Appliance Acts:

Mar. 2, 1893, ch. 196, 27 Stat. 531. See sections 1 to 7 of this title.

Mar. 2, 1903, ch. 976, 32 Stat. 943. See sections 8 to 10 of this title.

Apr. 14, 1910, ch. 160, 36 Stat. 298. See sections 11 to 16 of this title.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6, 7, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 2. **Automatic couplers**

It shall be unlawful for any such railroad to haul or permit to be hauled or used on its line any car not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

(Mar. 2, 1893, ch. 196 § 2, 27 Stat. 531; June 22, 1988, Pub. L. 100-342, § 13(1)(B), 102 Stat. 630.)

AMENDMENTS

1988-Pub. L. 100-342 substituted "railroad" for "common carrier" and struck out "used in moving interstate traffic" after "car".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and

cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6, 7, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 3. Refusal of insufficiently equipped cars from connecting lines

When any railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this title, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with said section, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by sections 1 to 7 of this title.

(Mar. 2, 1893, ch. 196, § 3, 27, Stat. 531; June 22, 1988, Pub. L. 100-342, § 13(1)(c), 102 Stat. 630.)

AMENDMENTS

1988–Pub. L. 100-342 struck out "person, firm, company, or corporation engaged in interstate commerce by" after "When any".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

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Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6, 7, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 4. Grab irons or handholds for security in coupling and uncoupling cars

Until otherwise ordered by the Secretary of Transportation, it shall be unlawful for any railroad company to use any car that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

(Mar. 2, 1893, ch. 196, § 4, 27 Stat. 531; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(A), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 13(1)(D), 102 Stat. 630.)

AMENDMENTS

1988–Pub. L. 100-342 struck out "in interstate commerce" after "any are".

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6, 7, 8, 9, 10, 12, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 5. Standard height of drawbars for freight cars; noncomplying cars excluded from traffic

No freight cars, either loaded or unloaded, shall be used which do not comply with the prescribed standard as to height of drawbars.

(Mar. 2, 1893, ch. 196, § 5, 27 Stat. 531; June 22, 1988, Pub. L. 100-342, § 13(1)(E), 102 Stat. 630.)

CODIFICATION

Amendment by Pub. L. 100-342, § 13(1)(E)(i), (ii), which substituted "railroads" for "common carriers" and struck out "engaged in interstate commerce", was directed to provisions of section 5 of act Mar. 2, 1893, which have been omitted from this section. See below.

Section is based on last sentence of section 5 of act Mar. 2, 1893. The first part of section 5, authorizing the American Railway Association to designate the standard height of drawbars and to certify its determination to the Interstate Commerce Commission, and requiring the Commission to give notice of the standard to all common carriers and to determine a standard if the association failed to do so, was omitted as executed.

AMENDMENTS

1988–Pub. L. 100-342 struck out "in interstate traffic" after "used". See Codification note above.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

Modification of height of drawbars by Interstate Commerce Commission, see section 12 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6, 7, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 6. Failure to equip cars as provided; duty of United States attorneys and Secretary of Transportation; exceptions from operation of provisions

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of sections 1 to 7 of this title, shall be liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation, such penalty to be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides, or in which the defendant has its principal executive office; and it shall be the duty of such United States attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Secretary of Transportation to lodge with the proper United States attorneys information of any such violations as may come to his knowledge: *Provided,* That nothing in sections 1 to 7 of this title shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives

used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs. For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of section 1 to 7 of this title shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(Mar. 2, 1893, ch. 196, § 6, 27 Stat. 532; Apr. 1, 1896, ch. 87, 29 Stat. 85; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Aug. 14, 1957, Pub. L. 85-135, § 1(1), 71 Stat. 352; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(A), 80 Stat. 939; July 8, 1976, Pub. L. 94-348, § 3(a), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, § 7(a), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96-423, § 8(b), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, § 13(1)(f), 102 Stat. 630.)

CODIFICATION

"Sections 3711 and 3716 to 3718 of title 31" was substituted in text for "the Federal Claims Collection Act of 1966" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97-452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988—Pub. L. 100-342 substituted "any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in

violation of any of the provisions of sections 1 to 7 of this title, shall be liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation, such penalty to be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides," for "Any common carrier engaged in interstate commerce by railroad using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of sections 1 to 7 of this title, shall be liable to a penalty of not less than $250 and not more than $2,500 for each and every such violation, to be assessed by the Secretary of Transportation and recovered in a suit or suits to be brought by the United States attorney in the district in which such violation occurred" and inserted at end "For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of sections 1 to 7 of this title shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest."

1980–Pub. L. 96-423 substituted "for the judicial district in which such violation occurred or in which the defendant has its principal executive office" for "having jurisdiction in the locality where such violation shall have been committed".

1978–Pub. L. 95-574 provided that penalties under this section be assessed by Secretary of Transportation.

1976–Pub. L. 94-348 substituted reference to no less than $250 and not more than $2,500 for reference to $250.

1957–Pub. L. 85-135 substituted "$250" for "$100".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district attorney" and "district attorney" and substituted "United States attorneys" for "district attorney". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation", the first time it appears, was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce

Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

RAILROAD SAFETY VIOLATIONS; MINIMUM AMOUNTS FOR COMPROMISED PENALTIES

Penalties assessed under this section not be compromised by the Secretary for less than $250, see section 3711 of Title 31, Money and Finance.

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 7, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 31 section 3711; title 42 section 4916; title 49 App. section 1655.

§ 7. **Assumption of risk by employees**

Any employee of any such railroad who may be injured by any locomotive, car, or train in use contrary to the provision of sections 1 to 7 of this title shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such railroad after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

(Mar. 2, 1893, ch. 196, § 8, 27 Stat. 532; June 22, 1988, Pub. L. 100-342, § 13(1)(H), 102 Stat. 631.)

AMENDMENTS

1988—Pub. L. 100-342 substituted "any such railroad" for "any such common carrier" and "such railroad" for "such carrier".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

CROSS REFERENCES

Assumption of risks of employment, see section 54 of this title.

Railroads in Territories and District of Columbia, section as applicable to, see section 8 of this title.

Contributory negligence by employees, see section 53 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6, 8, 9, 10, 13, 14, 16, 37, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 8. Provisions of certain sections extended

The provisions and requirements of sections 1 to 7 of this title shall be held to apply to railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section 6 of this title, or which are used upon street railways.

(Mar. 2, 1903, ch. 976, § 1, 32 Stat. 943; June 22, 1988, Pub. L. 100-342, § 13(2)(A), 102 Stat. 631.)

AMENDMENTS

1988—Pub. L. 100-342 struck out "common carriers by" before "railroads" and "engaged in interstate commerce" after "railroad".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members,

offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 932, which created the Department of Transportation. See section 1655(e)(1)(A) of Title 49, Appendix, Transportation.

CROSS REFERENCES

Carriers subject to section generally, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 13, 14, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 9. Power or train brakes; operation by engineer; rules for installation, inspection, maintenance, and repair

Whenever, as provided in sections 1 to 7 of this title, any train is operated with power or train brakes not less than 50 per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said 50 per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said sections, the Secretary of Transportation may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid. The rules,

standards, and instructions of the Association of American Railroads, adopted in 1925 and revised in 1933, 1934, 1941, and 1953, with such revisions as may have been adopted prior to April 11, 1958, for the installation, inspection, maintenance, and repair of all power or train brakes for railroads shall remain the rules, standards, and instructions for the installation, inspection, maintenance, and repair of all power or train brakes unless changed, after hearing, by order of the Secretary of Transportation: *Provided, however,* That such rules or standards or instructions or changes therein shall be promulgated solely for the purpose of achieving safety. The provisions and requirements of this section shall apply to all trains, locomotives, tenders, cars, and similar vehicles used, hauled, or permitted to be used or hauled, by any railroad. In the execution of this section, the secretary of transportation may utilize the services of the Association of American Railroads, and may avail himself of the advice and assistance of any department, commission, or board of the United States government, and of state governments, but no official or employee of the United States shall receive any additional compensation for such service except as now permitted by law. Failure to comply with any rule, regulation, or requirement promulgated by the Secretary of Transportation pursuant to the provisions of this section shall be subject to the like penalty as failure to comply with any requirement of this section.

(Mar. 2, 1903, ch. 976, § 2, 32 Stat. 943; Apr. 11, 1958, Pub. L. 85-385, 72 Stat. 86; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(B), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 13(2)(B), 102 Stat. 631.)

CODIFICATION

Provisions of this section for the initial adoption and implementation by the Interstate Commerce Commission of the rules, standards, and instructions of the Association of American Railroads one hundred and twenty days after the enactment of the Power or Train Brakes Safety Appliance Act of 1958, Apr. 11, 1958, have been omitted as executed.

AMENDMENTS

1988– Pub. L. 100-342 substituted "train brakes for railroads" for "train brakes for common carriers engaged in interstate commerce by railroad" and "by any railroad" for "by any railroad engaged in interstate commerce".

1958–Pub. L. 85-375 required Commission to adopt and put into effect rules, standards, and instructions of Association of American Railroads for installation, inspection, maintenance, and repair of all power or train brakes.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(B) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 13, 14, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 10. Former duties, requirements, and liabilities continued unless specifically amended

Nothing in sections 8 to 10 of this title shall be held or construed to believe any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad), the Secretary of Transportation, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of section 1 to 7 of this title, and all of such provisions, powers, duties, requirements, and liabilities of said sections 1 to 7 of this title shall, except as specifically amended by sections 8 to 10 of this title, apply thereto.

(Mar. 2, 1903, ch. 976, § 3, 32 Stat. 943; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(B), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 13(2)(C), 102 Stat. 631.)

AMENDMENTS

1988–Pub. L. 100-342 substituted "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" for "common carrier".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district

attorney". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

TRANSFER FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(B) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13, 14, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 11. Safety appliances required for each car; when hand brakes may be omitted

It shall be unlawful for any railroad subject to the provisions of sections 11 to 16[1] of this title to haul, or permit to be hauled or used on its line, any car subject to the provisions of said sections not equipped with appliances provided for in said sections, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and

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[1]See References in Text note below.

running boards, and all cars having ladders shall also be equipped with secure handholds or gram irons on their roofs at the tops of such ladders: *Provided,* That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

(Apr. 14, 1910, ch. 160, § 2, 36 Stat. 298; June 22, 1988, Pub. L. 100-342, § 13(3)(A), 102 Stat. 631.)

REFERENCES IN TEXT

Section 15 of this title, referred to in text within reference to sections 11 to 16 of this title, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" for "common carrier".

TRANSFER OF FUNCTIONS

All powers, duties, and function of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to an vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. Section 1655(e)(1)(C) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 13, 14, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 12. Safety appliances, as designated by the Secretary of Transportation to be standards of equipment; modification of standard height of drawbars

The number, dimensions, location, and manner of application of the appliances provided for by sections 4 and 11 of this title as designated by the Secretary of Transportation shall remain as the standards of equipment to be used on all cars subject to the provisions of sections 11 to 16[1] of this title, unless changed by an order of said Secretary of Transportation to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Secretary of Transportation shall be subject to a like penalty as failure to comply with any requirement of sections 11 to 16[2] of this title. Said Secretary is given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle which does not comply with the standard so prescribed by the Secretary.

(Apr. 14, 1910, ch. 160, § 3, 36 Stat. 298; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(C), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 13(3)(B), 102 Stat. 631.)

REFERENCES IN TEXT

Section 15 of this title, referred to in text within reference to sections 11 to 16 of this title, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

CODIFICATION

Amendment by section 13(3)(B)(ii), (iii) of Pub. L. 100-342, which substituted "railroads" and "railroad" for "common carrier" and "common carrier", respectively, was directed to provisions of section 3 of Act of Apr. 14, 1910, which required the Interstate Commerce Commission to give notice of such designation to all common carriers subject to the provisions of that Act within 6 months from the passage thereof and which authorized the Commission, upon full hearing and for good cause, to extend the period within which any common carrier had to comply with the provisions of this section with respect to the equipment of cars actually in service on Apr. 14, 1910, which provisions were omitted as executed.

AMENDMENTS

1988--Pub. L. 100-342 struck out "in interstate or foreign traffic" after "any car or vehicle" in two places. See Codification note above.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices and officers thereof under this section

relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(C) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 13, 14, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 13. **Penalty for using car not equipped as provided; hauling car for repairs where equipment becomes defective; liability for death or injury of employee; use of chains instead of drawbars**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of said sections not equipped as provided in said sections, shall be liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for willful violation. Such penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered as provided in section 6 of this title: *Provided,* That where any car shall have been properly

equipped, as provided in sections 1 to 16[2] of this title, and such equipment shall have become defective or insecure while such car was being used by such person upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point on the line of railroad on which the car was discovered to be defective or insecure where such car can be repaired, or, at the option of a connection person, such car may be hauled to the nearest available point on the line of such connection person where such car can be repaired if such point is no farther than the nearest available point on the line on which the car was discovered defective or insecure, without liability for the penalties imposed by this section or section 6 of this title, if any such movement is necessary to make such repairs and such repairs cannot be made except at any such repair point; and such movement or hauling of such car shall be at the sole risk of the person doing the moving or hauling, and nothing in this section shall be construed to relieve such person from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of sections 1 to 16[2] of this title; and nothing in this provision shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain livestock or "perishable" freight. For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted

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[2]See References in Text note below.

pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(Apr. 14, 1910, ch. 160, § 4, 36 Stat. 299; Aug. 14, 1957, Pub. L. 85-135, § 1(2), 71 Stat. 352; July 8, 1976, Pub. L. 94-348, § 3(b), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, § 7(b), 92 Stat. 2461; Jan. 14, 1983, Pub. L. 97-468, title VII, § 704, 96 Stat. 2580; June 22, 1988, Pub. L. 100-342, § 13(3)(C), 102 Stat. 632.)

REFERENCES IN TEXT

Section 15 of this title, referred to in text within reference to sections 1 to 16 of this title, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

Section 6 of this title, the second time it appears in text, was in the original "section 6 of this title" and probably means section 6 of act Mar. 2, 1893, ch. 196, 27 Stat. 532, which is classified to section 6 of this title, and not section 6 of act Apr. 14, 1910, ch. 160, 36 Stat. 299, which was classified to section 15 of this title prior to its repeal by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

CODIFICATION

"Sections 3711 and 3716 to 3718 of title 31" was substituted in text for "the Federal Claims Collection Act of 1966" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97-452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988–Pub. L. 100-342, § 13(3)(C)(i), substituted "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" for "common carrier subject to sections 11 to 16 of this title".

Pub. L. 100-342, § 13(3)(C)(ii), substituted "person" for "carrier" wherever appearing.

Pub. L. 100-342, § 13(3)(C)(iii)-(v), substituted "in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. Such penalty shall" for "of not less than $250 and not more than $2,500 for each and every such violation, to" and "and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered" for "and recovered" and inserted at end "For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest."

1983–Pub. L. 97-468 substituted "on the line of railroad on which the car was discovered to be defective or insecure where such car can be repaired, or, at the option of a connection carrier, such car may be hauled

to the nearest available point on the line of such connecting carrier where such car can be repaired if such point is no farther than the nearest available point on the line on which the car was discovered defective or insecure, without liability for the penalties imposed by this section or section 6 of this title, if any such movement is necessary to make such repairs and such repairs cannot be made except at any such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier doing the moving or hauling," for "where such car can be repaired, without liability for the penalties imposed by this section or section 6 of this title, if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier,".

1978–Pub. L. 95-574 provided that penalties under this section be assessed by Secretary of Transportation.

1976–Pub. L. 94-348 substituted reference to not less than $250 and not more than $2,500 for reference to $250.

1957–Pub. L. 85-135 substituted "$250" for $100".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(C) of Title 49, Appendix, Transportation.

RAILROAD SAFETY VIOLATIONS; MINIMUM AMOUNTS FOR COMPROMISED PENALTIES

Penalties assessed under this section no to be compromised by the Secretary for less than $250, see section 3711 of Title 31, Money and Finance.

§ 14. Liability for using car with defective equipment, except as specified

Except that, within the limits specified in section 13 of this title the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in sections 11 to 16[3] of this title shall be held or construed to relieve any railroad, the Secretary of Transportation, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements heretofore set out in sections 1 to 10 of this title; and, except as aforesaid, all of such provisions, powers, duties, requirements, and liabilities of said sections 1 to 10 of this title shall apply to sections 11 to 16[3] of this title.

(Apr. 14, 1910, ch. 160, § 5, 36 Stat. 299; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(C), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 13(3)(D), 102 Stat. 632.)

REFERENCES IN TEXT

Penalty provided by the statutes, referred to in text, may have reference to the penalty provisions specified in section 13 of this title.

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[3]See References in Text note below.

Section 15 of this title, referred to in text within reference to sections 11 to 16 of this title, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" for "common carrier".

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(C) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 12, 13, 16, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§ 15. **Repealed. Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444**

Section, acts Apr. 14, 1910, ch. 160, § 6, 36 Stat. 299; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(C), 80 Stat. 939, provided that it was the duty of the Secretary of Transportation to enforce the provisions of sections 11 to 16 of this title as to equipment of each car with safety appliances and that all powers theretofore granted to the

Interstate Commerce Commission were extended to the Secretary for the purpose of such enforcement. See section 501(b) of Title 49, Transportation.

§ 16. **Safety Appliance Acts; "railroad" defined**

As used in sections 1 to 16[4] of this title, commonly known as the Safety Appliance Acts, the term "railroad" shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.).

(Apr. 14, 1910, ch. 160, § 1, 36 Stat. 298; June 22, 1988, Pub. L. 100-342, § 13(3)(E), 102 Stat. 632.)

REFERENCES IN TEXT

Sections 1 to 16 of this title, commonly known as the Safety Appliance Acts, referred to in text, was in the original "this Act, the Act of March 2, 1893 (35 U.S.C. 1-7), and the Act of March 1903 (45 U.S.C. 8-10), commonly known as the Safety Appliance Acts". Those Acts, respectively, are act Apr. 14, 1910, ch. 160, 36 Stat. 298, which is classified to sections 11 to 16 of this title, act Mar. 2, 1893, ch. 196, 27 Stat. 531, which is classified to sections 1 to 7 of this title, and act Mar. 2, 1903, ch. 976, 32 Stat. 943, which is classified to sections 8 to 10 of this title.

Section 15 of this title, referred to in text within reference to sections 1 to 16 of this title, was repealed by Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444.

The Federal Railroad Safety Act of 1970, referred to in text, is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, a amended, which is classified generally to

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[4]See References in Text note below.

subchapter II (§ 431 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 421 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100-342 amended section generally. Prior to amendment, section read as follows: "The provisions of sections 11 to 16 of this title, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to what are commonly known as the 'Safety Appliance Acts' set out in sections 1 to 10 of this title."

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(C) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 12, 13, 14, 1013 of this title; title 42 section 4916; title 49 App. section 1655.

§§ 17 to 21. **Repealed. Pub. L. 97-468, title VII, § 705, Jan. 14, 1983, 96 Stat. 2580**

Section 17, act May 30, 1908, ch. 225, §§ 1, 2, 35 Stat. 476, related to locomotives to be equipped with safety ash pans.

Section 18, acts May 30, 1908, ch. 225, § 3, 35 Stat. 476; June 25, 1948 ch. 646, § 1, 62 Stat. 909; Oct 15, 1966, Pub. L. 89-670, § 6(e)(1)(D), 80 Stat. 939, set forth penalties for violations and authorized United States attorneys to bring actions for enforcement of provisions.

Section 19, acts May 30, 1908, ch. 225, § 4, 35 Stat. 476; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(D), 80 Stat. 939, provided for enforcement of the provisions of sections 17 to 21 of this title by the Secretary of Transportation.

Section 20, act May 30, 1908, ch. 225, § 5, 35 Stat. 476, specified those to be included in the term "common carrier".

Section 21, act May 30, 1908, ch. 225, § 6, 35 Stat. 476, provided that the provisions of sections 17 to 21 of this title not be applicable to locomotives on which an ash pan is not necessary.

§ 22. **Inspection of locomotives and appurtenances; "railroad" defined**

The term "railroad", when used in sections 22 to 29 and 31 to 34 of this title, shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.).

(Feb. 17, 1911, ch. 103, § 1, 36 Stat. 913; June 7, 1924, ch. 355, § 1, 43 Stat. 659; June 22, 1988, Pub. L. 100-342, § 14(1), 102 Stat. 632.)

REFERENCES IN TEXT

Sections 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title, were omitted from the Code.

The Federal Railroad Safety Act o 1979, referred to in text, is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 421 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100-342 amended section. Prior to amendment, section read as follows: "When used in sections 22 to 29 and 31 to 34 of this title, the terms 'carrier' and 'common carrier' means a common carrier by railroad, or partly by railroad and partly by water, within the continental United States, subject to subtitle IV of title 49, excluding street, suburban, and interurban electric railways unless operated as a part of a general railroad system of transportation. The term 'railroad' as used in said sections shall include all the roads in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term 'employees' as used in said sections shall be held to mean persons actually engaged in or connected with the movement of any train."

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and

cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

REORGANIZATION PLAN NO. 3 OF 1965

Eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 27, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

LOCOMOTIVE INSPECTION

SECTION 1. TRANSFER OF FUNCTIONS TO INTERSTATE COMMERCE COMMISSION

Except to the extent inconsistent with the provisions of section 2(b) hereof, all functions now vested in the director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, including the functions so vested by the Act of February 17, 1911, ch. 103, 36 Stat. 913, as amended (45 U.S.C. 22-29; 30-34), and by section 2 of the Act of March 4, 1915, ch. 169, 38 Stat. 1192, as amended (45 U.S.C. 30), are hereby transferred to the Interstate Commerce Commission.

SEC. 2. ABOLITIONS

(a) All offices of director of locomotive inspection, assistant director of locomotive inspection,

and district inspector of locomotives, provided for in the Acts referred to above (45 U.S.C. 22-34), are hereby abolished. The Interstate Commerce Commission shall make such provisions as it deems to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this reorganization plan.

(b) The functions with respect to dividing the territory comprising the several States and the District of Columbia into fifty locomotive boiler-inspection districts, vested in the director of locomotive inspection by section 4 of the above-mentioned Act of February 17, 1911 (45 U.S.C. 26), are hereby abolished.

SEC. 3. PERFORMANCE OF FUNCTIONS

The Interstate Commerce Commission may from time to time make such provisions as it shall deem appropriate authorizing the performance by any officer, employee, or organizational entity under the Commission of any function transferred to the Commission by the provisions of section 1 of this reorganization plan, but the Commission may not make any such provision which is in conflict with section 17(2) of the Interstate Commerce Act [49 U.S.C. 10304, 10305].

SEC. 4. RECORDS, PROPERTY AND FUNDS

(a) Consonant with section 4 of the Reorganization Act of 1949, as amended and this reorganization plan, the Interstate Commerce Commission shall make such provisions as it shall deem necessary respecting the transfer or other disposition of the records and property which are affected by a reorganization contained in this reorganization plan.

(b) Unexpended balances of appropriations, allocations, and other funds, available or to be made available for the Interstate Commerce Commission for expenses necessary to carry out locomotive inspection activities, shall continue to be available therefor under this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. PERSONNEL

(a) The Interstate Commerce Commission may employ and compensate such personnel as may be necessary to carry out the functions transferred to the Commission by this reorganization plan under the classified civil services and pursuant to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].

(b) The Interstate Commerce Commission shall appoint to a position under the classified civil service, without change in grade or salary, each person who immediately prior to the taking effect of this reorganization plan held the office of district inspector of locomotives. Such appointments shall be deemed to be made without any break in the service of any individual concerned and the provisions of this reorganization plan shall not be deemed to effect an involuntary separation of any district inspector of locomotives for the purposes of section 6(d) of the Civil Services Retirement Act (5 U.S.C. 2256(d) [5 U.S.C. 8336] or for the purposes of any other provision of law.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under Reorg. Plan No. 3 of 1965, relating generally to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers, were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(D) of Title 49, Appendix, Transportation.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1965, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of the locomotive inspection activities of certain personnel employed by or attached to the Interstate Commerce Commission.

I have stressed that we must reorganize and modernize the Government's organization structure in order to focus responsibilities, increase efficiency, and meet present-day needs more effectively. The reorganization plan which accords with recommendations made to me by the Interstate Commerce Commission, supports these objectives. It will make possible necessary changes in the organization and administration of the Commission's railroad safety operations.

The Commission's ability to organize and carry out most effectively its responsibilities for railroad safety is now severely limited by certain anachronistic

provisions of the locomotive inspection statutes. These provisions go back to an earlier period before steam locomotives were replaced almost completely by diesel engines. At that time locomotive boilers were temperamental and dangerous and special measures were required to enforce adequate safety standards. Present law specifies in detail the method of appointing locomotive inspectors, the functions to be performed by them, and the organization structure for administering inspection activities. While these provisions may have been suited to conditions 50 years ago, they are clearly inappropriate today.

Progress in railroad technology has not eliminated the need for locomotive inspection. Locomotive inspection is still essential for the safety of employees, passengers, and cargo. The Interstate Commerce Commission, however, properly should not be held to account for the performance of this important function as long as it lacks authority to make those changes in organization and operations which it deems necessary to meet current safety needs and to promote maximum economy and efficiency. The primary purpose of the accompanying reorganization plan is to terminate outdated arrangements which now stand in the way of the most effective management of the Commission's railroad safety program.

Organizational flexibility is at present restricted by the statutory requirement that there be 50 locomotive inspection districts and at least 1 inspector for each such district. The number of inspectors and districts cannot be adjusted to accommodate to changes in workload or other relevant factors.

Locomotive inspection is rigidly separated from related railroad safety activities performed under the

Interstate Commerce Commission. The locomotive inspection statutes restrict inspectors of locomotives to the inspection of locomotives only and prevent the inspection of locomotives (except brakes and safety appliances) by other Commission railroad safety personnel. Thus, the Commission is prevented from making the most effective utilization of its total staff of locomotive and train inspectors. In order to eliminate the present uneconomical duplicate visits to railroad yards and otherwise to promote the most economical and effective administration of its railroad safety responsibilities, the Commission should have the authority to assign staff to duties for which they may be qualified by training and experience. The reorganization plan will make this possible.

Organizational flexibility is hampered further by the provision for Presidential appointment and Senate confirmation of a director and two assistant directors of locomotive inspection. Originally, these officials were to be selected with reference to their practical knowledge of the construction and repair of boilers. Later amendments broadened their responsibilities to embrace all parts of the locomotive and tender. These clearly are not policy-making positions, warranting Presidential appointment. As is now the case with other comparable positions where appointments should be based primarily on professional and technical qualifications, personnel supervising locomotive inspection functions should be appointed under the classified civil service.

By eliminating the present cumbersome restrictions on inspection districts, the duties of locomotive inspectors, and the appointment of the director and assistant directors of locomotive inspection, the plan will make it possible for the Commission to utilize its personnel more efficiently, integrate the work

performed by locomotive inspectors with that performed by other Commission railroad safety inspectors, and take full advantage of recent improvements in the organization of the Commission's central office and field activities.

Upon the taking effect of the reorganization plan–

(1) All functions of the director of locomotive inspection, the assistant directors of locomotive inspection, and the district locomotive inspectors will be transferred to the Interstate Commerce Commission. Suitable powers of delegation with respect to the functions so transferred will be conferred upon the Commission.

(2) The position of director of locomotive inspection, the two positions of assistant director of locomotive inspection, and all positions of district locomotive inspector will be abolished. The Commission will be required to appoint to a position under the classified civil service, as provided in the reorganization plan, each person who immediately prior to the taking effect of the plan held the office of district inspector of locomotives; such appointments will be deemed to be made without any break in service.

(3) The function of dividing the territory comprising the several States and the District of Columbia into 50 locomotive-boiler-inspection districts will be abolished.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as

amended. I have also found and hereby declare that, by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan the provisions contained in section 5 thereof. The rates of compensation thereunder are those which I have found to prevail in respect of comparable positions in the executive branch of the Government.

The statutory authority for the exercise of the functions to be abolished by section 2(b) of the reorganization plan is contained in section 4 of the act of February 17, 1911 (ch. 103, 36 Stat. 914, as amended).

The reorganizations provided for in the reorganization plan will produce some immediate savings and significant long-range economies. The latter will result from future improvements in the organization and administration of the affected functions made possible by the plan. Since the plan will open the way for the more effective utilization of safety inspection staffs of the Interstate Commerce Commission, it will yield a significantly increased measure of safety inspection activity for each dollar spent for this purpose. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

Under the accompany reorganization plan, all essential Government railroad safety services to the traveling public and employees will continue to be performed. The plan provides urgently needed modernization of the organization and procedures in the Interstate Commerce Commission's railroad safety program. I recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, MAY 27, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 28, 29, 30, 34 of this title; title 42 section 4916; title 49 App. section 1655.

§ 23. Use of unsafe locomotives and appurtenances unlawful; inspection and tests

It shall be unlawful for any railroad to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such railroad without unnecessary peril to life or limb, and unless said locomotive, it's boiler, tender, and all parts and appurtenances thereof have been inspected from time to time in accordance with the provisions of sections 22 to 29 and 31 to 34 of this title and are able to withstand such test or tests as may be prescribed in the rules and regulations hereinafter provided for.

(Feb. 17, 1911, ch. 103, § 2, 36 Stat. 913; Mar. 4, 1915, ch. 169, § 1, 38 Stat. 1192; June 7, 1924, ch. 355, § 2, 43 Stat. 659; June 22, 1988, Pub. L. 100-342, § 14(2), 102 Stat. 632.)

REFERENCES IN TEXT

Section 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title, were omitted from the Code.

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" for "carrier" in two places.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(e) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 28, 29, 30, 34 of this title; title 49 App. section 1655.

CODIFICATION

Section 24, acts Feb. 17, 1911, ch. 103, § 3, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 1, 61 Stat. 120; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; June 22, 1988, Pub. L 100-342, § 14(3), 102 Stat. 633, provided for appointment and salaries of a director of locomotive inspection and two assistant directors of locomotive inspection and was omitted pursuant to Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 5351, 79 Stat. 1320, set out under section 22 of this title, which abolished the offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of

locomotives. Acts June 26, 1918, ch. 105, 40 Stat. 616; June 7, 1924, ch. 355, § 6, 43 Stat. 659; June 27, 1930, ch. 644, § 1, 46 Stat. 822, which provided for the pay of chief inspector, assistant inspectors, and district directors of locomotives, and related to office allowances for each inspector, and which were cited as a credit to section 24, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 643, 646, 648.

Section 25, acts Feb. 17, 1911, ch. 103, § 3, 36 Stat. 914; June 7, 1924, ch. 355, § 3, 43 Stat. 659; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 1, 61 Stat. 120, provided for location of office of director of locomotive inspection in Washington, D.C., and for staffing of such office, and was omitted pursuant to Reorg. Plan No. 3 of 1965, set out under section 22 of this title.

Section 26, acts Feb. 17, 1911, ch. 103, § 4, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 2, 61 Stat. 120, directed director of locomotive inspection to divide country into 50 locomotive boiler inspection districts os as to most effectively divide up work of inspector for each such district and was omitted pursuant to Reorg. Plan No. 3 of 1965, set out under section 22 of this title, which abolished the offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the country into districts. Acts June 26, 1918, ch. 105, 40 Stat. 616; June 27, 1930, ch. 644, § 2, 46 Stat. 823, which were cited as a credit to section 26, were repealed by Pub. L. 89-554, § 8(a). Sept. 6, 1966, 80 Stat. 643, 648.

Section 27, act Feb. 17, 1911, ch. 103, § 4 (par), as added June 7, 1924, ch. 355, § 4, 43 stat. 659, and amended Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148, authorized appointment of 15 additional boiler inspectors over and above number authorized by section 26 of this title as the needs of the service may require, and was omitted pursuant to Reorg. Plan No. 3 of 1965, set out under section 22 of this title.

§ 28. Rules and instructions as to inspection

Each railroad subject to sections 22 to 29 and 31 to 34 of this title shall file its rules and instructions for the inspection of locomotive boilers with the chief inspector within three months after February 17, 1911, and such rules and instructions shall become obligatory upon such railroad: *Provided, however,* That if any railroad subject to said sections shall fail to file its rules and instructions the director of locomotive inspection shall prepare rules and instructions not inconsistent herewith for the inspection of locomotive boilers, to be observed by such railroad; which rules and instructions, a copy thereof being served upon the president, general manager, or general superintendent of such railroad, shall be obligatory, and a violation thereof punished as hereinafter provided: *Provided also,* That such railroad may from time to time change the rules and regulations herein provided for, but such change shall not take effect and the new rules and regulations be in force until the same shall have been filed with and approved by the Secretary of Transportation. The director of locomotive inspection shall also make all needful rules, regulations, and instructions not inconsistent herewith for the conduct of his office and for the government of the district inspectors: *Provided, however,* That all such rules and instructions shall be approved by the Secretary of Transportation before they take effect.

(Feb. 17, 1911, ch. 103, § 5, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(E), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 14(4), 102 Stat. 633.)

REFERENCES IN TEXT

Section 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title were omitted from the Code

CODIFICATION

Provision of this section for the holding of hearings and approval by the Interstate Commerce Commission with reference to the rules and instruction filed by the carriers within three months after Feb. 17, 1911, and provision for the modification of such filed rules and instructions as required by the Commission, have been omitted as executed.

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" for "common carrier" before "may from time to time" and substituted "railroad" for "carrier" wherever appearing.

1940–Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" in two places.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to the Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and

of the Chairman, members, offices, and officers thereof relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 29, 30, 34 of this title; title 49 App. section 1655.

§ 29. **Duties of district inspectors; inspection and repairs by railroads; notice to railroad of condition of boiler; appeal to director and reexamination; further appeal to Secretary**

It shall be the duty of each inspector to become familiar, so far as practicable, with the condition of each locomotive boiler ordinarily housed or repaired in his district, and if any locomotive is ordinarily housed or repaired in two or more districts, then the director of locomotive inspection or an assistant shall make such division between inspectors as will avoid the necessity for duplication of work. Each inspector shall make such personal inspection of the locomotive boilers under his

care from time to time as may be necessary to fully carry out the provisions of sections 22 to 29 and 31 to 34 of this title, and as may be consistent with his other duties, but he shall not be required to make such inspections at stated times or at regular intervals. His first duty shall be to see that the railroads make inspections in accordance with the rules and regulations established or approved by the Secretary of Transportation, and that railroads repair the defects which such inspections disclose before the boiler or boilers or appurtenances pertaining thereto are again put in service. Each railroad subject to such sections shall keep on file the report of each inspection required by such rules and regulations and the report showing the repair of the defects disclosed by the inspection. The rules and regulations referred to in this section shall prescribe the manner in which such reports shall be kept. Whenever any district inspector shall, in the performance of his duty, find any locomotive boiler or apparatus pertaining thereto not conforming to the requirements of the law or the rules and regulations established and approved as hereinbefore stated, he shall notify the railroad in writing that the locomotive is not in serviceable condition, and thereafter such boiler shall not be used until in serviceable condition: *Provided,* That a railroad, when notified by an inspector in writing that a locomotive boiler is not in serviceable condition, because of defects set out and described in said notice, may within five days after receiving said notice, appeal to the director of locomotive inspection by telegraph or by letter to have said boiler reexamined, and upon receipt of the appeal from the inspector's decision, the director of locomotive inspection shall assign one of the assistant directors of locomotive inspection or any district inspector other than the one from whose decision the appeal is taken to reexamine and inspect said boiler within fifteen days from date of notice. If upon such

reexamination the boiler is found in serviceable condition, the director of locomotive inspection shall immediately notify the railroad in writing, whereupon such boiler maybe put into service without further delay; but if the reexamination of said boiler sustains the decision of this district inspector, the director of locomotive inspection shall at once notify the railroad owning or operating such locomotive that the appeal from the decision of the inspector is dismissed, and upon the receipt of such notice the railroad may, within thirty days, appeal to the Secretary of Transportation, and upon such appeal, and after hearing, said Secretary shall have power to revise, modify, or set aside such action of the director of locomotive inspection and declare that said locomotive is in serviceable condition and authorize the same to be operated: *Provided further,* That pending either appeal the requirements of the inspector shall be effective.

(Feb. 17, 1911, ch. 103, § 6, 36 Stat. 915; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(E), 80 Stat. 939; Oct. 10, 1980, Pub. L. 96-423, § 13, 94 Stat. 1816; June 22, 1988, Pub. L. 100-342, § 14(5), 102 Stat. 633.)

REFERENCES IN TEXT

Sections 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title, were omitted from the Code.

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" and "railroads" for "carrier" and "carriers", respectively, wherever appearing.

1980–Pub. L. 96-423 substituted "Each carrier subject to such sections shall keep on file the report of each inspection required by such rules and regulations and the report showing the repair of the defects disclosed by the inspection" for "To this end each carrier subject to said sections shall file with the inspector in charge, under the oath of the proper officer or employee, a duplicate of the report of each inspection required by such rules and regulations, and shall also file with such inspector, under the oath of the proper officer or employee, a report showing the repair of the defects disclosed by the inspection" and "The rules and regulations referred to in this section shall prescribe the manner in which such reports shall be kept" for "The rules and regulations hereinbefore provided for shall prescribe the time at which such reports shall be made".

1940–Act Apr. 22, 1940, substituted "director of locomotive inspection" and "assistant directors of locomotive inspection" for "chief inspector" and "assistant chief inspectors" wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad

engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 28, 30, 34 of this title; title 49 App. section 1655.

§ 30. Powers and duties of inspectors, and provisions of certain sections applicable to all parts of locomotive and tender; examinations of inspectors

The director of locomotive inspection ant the two assistant directors of locomotive inspection, together with all the district inspectors, appointed as hereinbefore provided, shall inspect and shall have the same powers and duties with respect to all the parts and appurtenances of the locomotive and tender that they have with respect to the boiler of a locomotive and the appurtenances thereof, and the provision of sections 22 to 29 and 31 to 34 of this title as to the equipment of locomotives shall apply to include the entire locomotive and tender and all their parts with the same force and

effect as it applies to locomotive boilers and their appurtenances. All inspectors and applicants for the position of inspector shall be examined touching their qualifications and fitness with respect to the additional duties imposed.

(Mar. 4, 1915, ch. 169, § 2, 38 Stat. 1192; Apr. 22, 1940, ch. 124, § 2, 54 Stat. 148.)

REFERENCES IN TEXT

Sections 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title, were omitted from Code.

AMENDMENTS

1940—Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" wherever appearing.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(F) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of

the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1655.

§ 31. Annual report of director

The director of locomotive inspection shall make an annual report to the Secretary of Transportation of the work done during the year, and shall make such recommendations for the betterment of the service as he may desire.

(Feb. 17, 1911, ch. 103, ch. 103, § 7, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(E), 80 Stat. 939.)

AMENDMENTS

1940—Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" wherever appearing.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation

and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 28, 29, 30, 34 of this title; title 49 App. section 1655.

§ 32. **Report by railroad to director as to accident; preservation of disabled parts; investigation and report thereupon**

In the case of accident resulting from failure from any cause of a locomotive boiler or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident, by the railroad owning or operating said locomotive, to the director of locomotive inspection. Whereupon the facts concerning such accident shall be investigated by the director of

locomotive inspection or one of his assistants, or such inspector as the director of locomotive inspection may designate for that purpose. And where the locomotive is disabled to the extent that it cannot be run by its own steam, the part or parts affected by the said accident shall be reserved by said railroad intact, so far as possible, without hindrance or interference to traffic until after said inspection. The director of locomotive inspection or an assistant or the designated inspector making the investigation shall examine or cause to be examined thoroughly the boiler or part affected, making full and detailed report of the cause of the accident to the director of locomotive inspection.

(Feb. 17, 1911, ch. 103, § 8, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; June 22, 1988, Pub. L. 100-342, § 14(6), 102 Stat. 633.)

AMENDMENTS

1988–Pub. L. 100-342 substituted "railroad" for "carrier" in two places.

1940–Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" wherever appearing.

TRANSFER OF FUNCTIONS

The functions, powers, and duties under this section which were transferred to the Secretary of Transportation by section 6(e)(1)(E) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 938 [section 1655(e)(1)(E) of Title 49, Appendix, Transportation], were transferred to the national Transportation Safety Board within the Department of Transportation by section 5(b) of Pub. L. 89-670, which also directed the Board to exercise such

functions, powers, and duties with regard to (1) determining the cause or probable cause of transportation mining the cause or probable cause of transportation accidents and reporting the facts, conditions, and circumstances relating to such accidents and (2) reviewing on appeal the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary or by an Administrator. Section 5 of Pub. L. 89-670 was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93-633, title III, § 304 [enacting sections 1902 and 1903 of Title 49, Appendix], established the National Transportation Safety Board as an independent Agency of the United States on and after Apr. 1, 1975, and directed that the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable cause of causes of any railroad accident in which there is a fatality, substantial property damage, or which involves a passenger train, and report in writing on the facts, conditions, and circumstances of each accident investigated.

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on the railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(E) of Title 49, appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of

the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 28, 29, 30, 33, 34 of this title; title 49 App. section 1655.

§ 33. **Reports by Secretary of investigations**

The Secretary of Transportation may at any time call upon the director of locomotive inspection for a report of any accident embrace in section 32 of this title, and upon the receipt of said report, if he deems it to[5] the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as he deems proper. Such reports shall be made public in such manner as the Secretary deems proper. Neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

(Feb. 17, 1911, ch. 103, § 8, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. p Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(E), 80 Stat. 939; Jan. 3, 1975, Pub. L. 93-633, title III, § 304, 88 Stat 2168.)

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[5]So in original. Probably should be "to be in".

AMENDMENTS

1940—Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" wherever appearing.

TRANSFER OF FUNCTIONS

The functions, powers, and duties under this section which were transferred to the Secretary of Transportation by section 6(e)(1)(E) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 938 [section 1655(e)(1)(E) of Title 49, Appendix, Transportation], were transferred to the National Transportation Safety Board within the Department of Transportation by section 5(b) of Pub. L. 89-670, which also directed the Board to exercise such functions, powers, and duties with regard to (1) determining the cause or probable cause of transportation accidents and reporting the facts, conditions, and circumstances relating to such accidents and (2) reviewing on appeal the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary or by an Administrator. Section 5 of Pub. L. 89-670 was repealed by Pub. L. 93-633, title III, § 308(1), Jan 3, 1975, 8 Stat. 2173. Pub. L. 93-633, Title III, § 304 [enacting sections 1902 and 1903 of Title 49, Appendix], established the National Transportation Safety Board as an independent Agency of the United States on and after Apr. 1, 1975 and directed that the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any railroad accident in which there is a fatality, substantial property damage, or which involves a passenger train, and report in writing on the facts, conditions, and circumstances of each accident investigated.

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 28, 29, 30, 34 of this title; title 49 App. section 1655.

§ 34. **Penalty for violations by railroad; duty of United States attorney to sue therefor; director to give information; willful violations**

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) violating sections 22 to 29 and 31 to 34 of this title, or any rule or regulation made under its provisions or any lawful order of any inspector, shall be

liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. Such penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides, or in which the defendant has its principal executive office; and it shall be the duty of such attorneys, subject to the direction of the Attorney General, to bring such suits upon duly verified information being lodged with them, respectively, or such violations having occurred; and it shall be the duty of the director of locomotive inspection to give information to the proper United States attorney of all violations coming to his knowledge. For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of sections 22 to 29 and 31 to 34 of this title, or any rule or regulation made under its provisions or any lawful order of any inspector, shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(Feb. 17, 1911, ch. 103, § 9, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Aug. 14, 1957, Pub. L. 85-135,

§ 3, 71 Stat. 351; July 8, 1976, Pub. L. 94-348, § 3(c), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, § 7(c), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96-423, § 8(c), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, § 14(7), 102 Stat. 633.)

REFERENCES IN TEXT

Sections 24 to 27 of this title, referred to in text within reference to sections 22 to 29 of this title, were omitted from the Code.

CODIFICATION

"Sections 3711 and 3716 to 3718 of title 31' was substituted in text for "the Federal Claims Collection Act of 1966" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97-452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988–Pub. L. 100-342 substituted "Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) violating sections 22 to 29 and 31 to 34 of this title, or any rule or regulation made under its provisions or any lawful order of any inspector, shall be liable to a penalty in such amount, not less than $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. Such

penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant reside," for "any common carrier violating the provisions of sections 22 to 29 and 31 to 34 of this title relating to locomotives, their boilers, tenders, and so forth, or any rule or regulation made under such provisions or any lawful order of any inspector shall be liable to a penalty of not less than $250 and not more than $2,500 for each and every such violation, to be assessed by the Secretary of Transportation and recovered in a suit or suits to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred" and inserted at end "For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of sections 22 to 29 and 31 to 34 of this title, or any rule or regulation made under its provisions or any lawful order of any inspector, shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest."

1980—Pub. L. 96-423 substituted "for the judicial district in which such violation occurred or in which the defendant has its principal executive office" for "having jurisdiction in the locality where such violation shall have been committed".

1978–Pub. L. 95-574 provided that penalties under this section be assessed by the Secretary of Transportation.

1976–Pub. L. 94-348 substituted reference to not less than $250 and not more than $2,500 for reference to $250.

1957–Pub. L. 85-135 substituted "$250" for "$100".

1940–Act Apr. 22, 1940, substituted "director of locomotive inspection" for "chief inspector" and struck out "of locomotive boilers".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this sections relating to safety appliances and equipment on the railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(E) of Title 49, Appendix, Transportation.

The offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to

dividing the territory comprising the several States and the District of Columbia into 50 locomotive boiler-inspection districts, were abolished and all other functions transferred to the Interstate Commerce Commission by Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, set out under section 22 of this title.

RAILROAD SAFETY VIOLATIONS; MINIMUM AMOUNTS FOR COMPROMISED PENALTIES

Penalties assessed under this section not to be compromised by the Secretary for less than $250, see section 3711 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 23, 28, 29, 30 of this title; title 31 section 3711; title 49 App. section 1655.

§ 35. **Investigations and report by Secretary on block-signal systems and appliances for automatic control of trains; evidence**

The Secretary of Transportation is directed to investigate and report on the use of and necessity for block-signal systems and appliances for the automatic control of railway trains in the United States. For this purpose the Secretary is authorized to employ persons who are familiar with the subject, and may use such of his own employees as are necessary to make a thorough examination into the matter.

In transmitting his report to the Congress the Secretary shall recommend such legislation as to the Secretary seems advisable.

To carry out and give effect to the provision of this section the Secretary shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State or Territory of the United States.

(June 30, 1906, No. 46, 34 Stat. 838; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(H), 80 Stat. 939.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(H) Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1655.

§ 36. Investigation and testing by Secretary of appliances or systems to promote safety

The Secretary of Transportation is authorized, at his discretion, to investigate, test experimentally, and report on the use and need of any appliances or systems intended to promote the safety of railway operation which may be furnished in completed shape to the Secretary for such investigation and test entirely free of

cost to the Government. For this purpose the Secretary is authorized to employ persons familiar with the subject to be investigated and (**NOT LEGIBLE**), and may also make use of his regular employees for such purposes.

(May 27, 1908, ch. 200, § 1, 35 Stat. 325; Oct 15, 1966, Pub. L. 89-670, § 6(e)(1)(I), 80 Stat. 939.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(I) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49, section 1655.

§ 37. **Inspection of mail cars**

Hereafter all inspectors employed for the enforcement of the provisions of sections 1 to 7 of this title, as to safety appliances shall also be required to make examination of the construction, adaptability, design, and condition of all mail cars used on any railroad in the United States and make report thereon, a copy of which report shall be transmitted to the United States Postal Service.

(May 27, 1908, ch. 200, § 1, 35 Stat. 325; Mar. 4, 1909, ch. 299, § 1, 35 Stat. 965; Aug. 12, 1970, Pub. L. 91-375, § 4(a), 84 Stat. 773.)

TRANSFER OF FUNCTIONS

All powers, duties and functions of the Interstate Commerce Commission and of the Chairman, members, offices and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(I), (J) of Title 49, Appendix, Transportation.

"United States Postal Service" was substituted for "Postmaster General" in text pursuant to Pub. L. 93-375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service which abolished the office of Postmaster General of the Post Office Department and transferred its functions to the United States Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1655.

§ 38. Monthly reports of railroad accidents; duty of railroad to make; "railroad" defined

It shall be the duty of the general manager, superintendent, or other proper officer of every railroad to make to the Secretary of Transportation a monthly report, under oath, of all collisions, derailments, or other

accidents resulting in death or injury to any person or damage to equipment or roadbed, arising from the operation of such railroad, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided,* That hereafter all said railroads shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Secretary. The term "railroad" when used in sections 38 to 43 of this title shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.).

(May 6, 1910, ch. 208, § 1, 36 Stat. 350; Sept. 13, 1960, Pub. L. 860762, §1, 74 Stat. 903; Oct. 15, 1966, Pub. L. 89-670, §6 (e)(1)(K), 80 Stat. 939; June 22, 1988, Pub. L. 100-342, § 15(1), 102. Stat. 633.)

REFERENCES IN TEXT

The Federal Railroad Safety Act of 1970, referred to in text, is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 421 of this title and Tables.

AMENDMENTS

1988–Pub. L. 100-342 substituted "every railroad" for "every common carrier engaged in interstate or foreign commerce by railroad" and "railroads" for carriers", and inserted at the end "The term 'railroad' when used in sections 38 to 43 of this title shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et. seq.)."

1960–Pub. L. 86-762 substituted "death or injury to any person or damage to equipment, or roadbed", and struck out "under such rules and regulations as may be prescribed by the said commission" after "operation of such railroad".

SHORT TITLE

Act May 6, 1910, ch. 208, 36 Stat. 350, as amended, which is classified to sections 38 to 43 of this title, is popularly known as the "accident Reports Act".

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties and functions of the Interstate Commerce Commission and of the Chairman, members, offices and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 41, 42, 43, 43a of this title; title 49 App. section 1655.

§ 39. **Penalty for failure to make report**

Any railroad failing to make the report provided for in section 38 of this title within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not

more than $100 for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

(May 6, 1910, ch. 208, § 2, 36 Stat. 351; Jan. 3, 1975, Pub. L. 93-633, title II, § 204(b), 88 Stat. 2166; June 22, 1988, Pub. L. 100-342, § 15(2), 102 Stat. 634.)

AMENDMENTS

1988—Pub. L. 100-342 substituted "railroad" for "common carrier" and struck out at end "In lieu of the foregoing, any such carrier may be required to pay a civil penalty pursuant to subsections (b) and (c) of section 438 of this title."

1975—Pub. L. 93-633 made a carrier liable for payment of a civil penalty under section 438(b) and (c) of this title in lieu of a criminal penalty.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, mangers, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 42, 43, 43a, 438 of this title; title 42 section 4916; title 49 App. section 1655.

§ 40. Investigation by Secretary of accidents; cooperation with State commissions; reports of investigations

The Secretary of Transportation shall have authority to investigate all collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad occurring on the line of any railroad. The Secretary, or any impartial investigator thereunto authorized by the Secretary, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that purpose may subpena witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said railroads with all reasonable facilities: *Provided,* That when such accident is investigated by a commission of the State in which it occurred, the Secretary of Transportation shall, if convenient, make any investigation he may have previously determined upon, at the same time as, and in connection with, the State commission investigation. The Secretary shall, when he deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as he deems proper. Such reports shall be made public in such manner as the Secretary deems proper.

(May 6, 1910, ch. 208, § 3, 36 Stat. 351; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(K), 80 Stat. 939; Jan. 3, 1975,

Pub. L. 93-633, title III, § 304, 88 Stat. 2168; June 22, 1988, Pub. L. 100-342, § 15(3), 102 Stat. 634.)

AMENDMENTS

1988—Pub. L. 100-342 substituted "any railroad" for "any common carrier engaged in interstate or foreign commerce by railroad" and "railroads" for carriers".

TRANSFER OF FUNCTIONS

The functions, powers, duties, under this section which were transferred to the Secretary of Transportation by section 6(e)(1)(K) of Pub. L. 89-670, Oct. 15, 1866, 80 Stat. 938 [section 1655(e)(1)(K) of Title 49, Appendix, Transportation], were transferred to the National Transportation Safety Board within the Department of Transportation by section 5(b) of Pub. L. 89-670, which also directed the Board to exercise such functions, powers, and duties with regard to (1) determining the cause or probable cause of transportation accidents and reporting the facts, conditions, and circumstances relating to such accidents and (2) reviewing on appeal the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary or by an Administrator. Section 5 of Pub. L. 89-670 was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93-633, title III, § 304 [enacting sections 1902 and 1903 of Title 49, Appendix], established the National Transportation Safety Board as an independent Agency of the United States on and after Apr. 1, 1975 and directed that the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any railroad accident in which there is a fatality, substantial property damage, or which involves a

passenger train, and report in writing on the facts, conditions, and circumstances of each accident investigated.

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers to the Secretary of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 41, 42, 43, 43a of this title; title 42 section 4916; title 49 App. sections 26, 1655.

§ 41. Reports not evidence in suits for damages

Neither the report required by section 38 of this title nor any report of the investigation provided for in section 40 of this title nor nay part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

(May 6, 1910, ch. 208, § 4, 36 Stat. 351.)

TRANSFER OF FUNCTIONS

All power, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to

safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 42, 43, 43a of this title; title 42 section 4916; title 49 App. sections 26, 1655.

§ 42. **Rules and regulations; form of reports**

The Secretary of Transportation is authorized to prescribe such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of sections 38 to 43 of this title.

(May 6, 1910, ch. 208, § 5, 36 Stat. 351; Sept. 13, 1960, Pub. L. 86-762, § 2, 74 Stat. 904; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(1)(K), 80 Stat. 939.)

AMENDMENTS

1960—Pub. L. 86-762 substituted "such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of sections 38 to 43 of this title' for "for such common carriers a method and form for making the reports hereinbefore provided".

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Interstate Commerce Commission" pursuant to Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and railroads to the Secretary of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 43, 43a of this title; title 42 section 4916; title 49 App. sections 26, 1655.

§ 43. Penalties for violations by railroads; duty of United States attorney to sue therefor; willful violations

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) violating sections 38 to 43 of this title or any rule, regulation, order, or standard issued under sections 38 to 43 of this title or the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] pertaining to accident reporting or investigations shall be liable or a penalty in such amount, not less thant[6] $250 nor more than $10,000 per violation (with each day of a violation constituting a separate violation), or where a grossly negligent violation or a pattern of repeated violations

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[6]So in original. Probably should be "than".

has created an imminent hazard of death or injury to persons, or has caused death or injury, not to exceed $20,000, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. Such penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides, or in which the defendant has its principal executive office. For purposes of this section, an act by an individual that causes a railroad to be in violation of any of the provisions of sections 38 to 43 of this title or any rule, regulation, order, or standard issued under sections 38 to 43 of this title or the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] pertaining to accident reporting or investigations shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(May 6, 1910, ch. 208, § 7, 36 Stat. 351; Sept. 13, 1960, Pub. L. 86-762, § 3, 74 Stat. 904; June 22, 1988, Pub. L. 100-342, § 15(4), 102 Stat. 634.)

REFERENCES IN TEXT

The Federal Railroad Safety Act of 1970, referred to in text, is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 421 of this title and Tables.

CODIFICATION

"Sections 3711 and 3716 to 3718 of title 31" was substituted in text for "the Federal Claims Collection Act of 1966" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97-452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988—Pub. L. 100-342 amended section generally. Prior to amendment, section read as follows:

"(a) The term 'interstate commerce,' as used in sections 38 to 43 of this title, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term 'foreign commerce,' as used in said sections, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

"(b) The phrase 'arising from the operation of such railroad,' as used in sections 38 to 43 of this title, shall include all activities of the railroad which are related to the performance of its transportation business."

1960—Pub. L. 86-762 designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof under this section relating to safety appliances and equipment on railroad engines and cars and the protection of employees and travelers were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(1)(K) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 42, 43a of this title; title 42 section 4916; title 49 App. section 1655.

§ 43a. Accident reports

If a railroad, in reporting an accident or incident under the Accident Reports Act (45 U.S.C. 38 et seq.) assigns human error as a cause of the accident or incident, such report shall include, at the option of each employee whose error is alleged, a statement by such employee explaining any factors the employee alleges contributed to the accident or incident.

(Pub. L. 100-342, § 24, June 22, 1988, 102 Stat. 639.)

REFERENCES IN TEXT

The Accident Reports Act, referred to in text, is act May 6, 1910, ch. 208, 36 Stat. 350, as amended, which is classified generally to sections 38 to 43 of this title. For complete classification of this Act to the Code,

see Short Title note set out under section 38 of this title and Tables.

§§ 44 to 46. Transferred

CODIFICATION

Section 44, acts Feb. 23, 1905, ch. 744, § 1, 33 Stat. 743; June 13, 1957, Pub. L. 85-50, § 1(1), 71 Stat. 69 relating to awards for acts of heroism involving railroads or motor vehicles, was transferred to section 1201 of Title 49, Appendix, Transportation.

Section 45, act Feb. 23, 1905, ch. 744, § 2, 33 Stat. 743, relating to issuance of rosettes and ribbons, was transferred to section 1202 of Title 49, Appendix.

Section 46, acts Feb. 23, 1905, ch. 744, § 3, 33 Stat. 743; June 13, 1957, Pub. L. 85-50, § 1(2), 71 Stat. 69, relating to authorization of appropriations for carrying out sections 44 and 45 of this title, was transferred to section 1203 of Title 49, Appendix.

CHAPTER 2–LIABILITY FOR INJURIES TO EMPLOYEES

Sec.

51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined.
52. Carriers in Territories or other possessions of United States.
53. Contributory negligence; diminution of damages.
54. Assumption of risks of employment.
55. Contract, rule, regulation, or device exempting from liability; set-off.

56. Actions; limitation; concurrent jurisdiction of courts.
57. Who included in term "common carrier".
58. Duty or liability of common carriers and rights of employees under other acts not impaired.
59. Survival of right of action of person injured.
60. Penalty for suppression of voluntary information incident to accidents; separability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 721, 1207 of this title; title 15 section 3901; title 28 section 1445.

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery,

track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

(Apr. 22, 1908, ch. 149, § 1, 35 Stat. 65; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

AMENDMENTS

1939—Act Aug. 11, 1939, inserted last par.

SHORT TITLE

The Act of Apr. 22, 1908, as amended, which comprises this chapter, is popularly known as the "Employers' Liability Act".

The following are also popularly known as Employers' Liability Acts:

June 11, 1906, ch. 3073, 34 Stat. 232 [Unconstitutional].

Apr. 5, 1910, ch. 143, 36 Stat. 291. See sections 56 and 59 of this title.

Aug. 11, 1939, ch. 685, 53 Stat. 1404. See sections 51, 54, 56, and 60 of this title.

Form of complaint, see Form 14, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 52. Carriers in Territories or other possessions of United States

Every common carrier by railroad in the Territories, the District of Columbian, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(Apr. 22, 1908, ch. 149, § 2, 35 Stat. 65.)

§ 53. Contributory negligence; diminution of damages

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the

amount of negligence attributable to such employee: *Provided,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(Apr. 22, 1908, ch. 149, § 3, 35 Stat. 66.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§ 54. Assumption of risks of employment

In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(Apr. 22, 1908, ch. 149, § 4, 35 Stat. 66; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

AMENDMENTS

1939—Act Aug. 11, 1939, inserted "where such injury or death resulted in whole or in part from the

negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case" after "of his employment in any case".

CROSS REFERENCES

Assumption of risk by employees, see section 7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§ 55. Contract, rule, regulation, or device exempting from liability; set-off.

Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void: *Provided,* That in any action brought against any such common carrier under or by virtue of any of the provisions of this chapter, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the inured employee or the person entitled thereto on account of the injury or death for which said action was brought.

(Apr. 22, 1908, ch. 149, § 5, 35 Stat. 66.)

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

(Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch. 143, § 1, 36 Stat. 291; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, ch. 685, § 2, 53 Stat. 1404; June 25, 1948, ch. 646, § 18, 62 Stat. 989.)

CODIFICATION

The first par. of this section is from act Apr. 22, 1908.

The second par. of this section is from act Apr. 5, 1910.

AMENDMENTS

1948—Act June 25, 1948, struck out provision in last sentence relating to removal of actions.

1939—Act Aug. 11, 1939, changed limitation in first sentence from two to three years.

CHANGE OF NAME

"District court" was substituted for "circuit court" to conform to act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment by that Act is effective Sept. 1, 1948.

CROSS REFERENCES

Actions in State courts not removable to federal courts, see section 1445 of Title 28, Judiciary and Judicial Procedure.

Venue of district court—
Generally, see section 1391 et seq. of Title 28.
Change of venue, see section 1404 of Title 28.

§ 57. Who included in term "common carrier"

The term "common carrier" as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

(Apr. 22, 1908, ch. 149, § 7, 35 Stat. 66.)

§ 58. Duty or liability of common carriers and rights of employees under other acts not impaired.

Nothing in this chapter shall be held to limit the duty or liability of common carriers or to impair the

rights of their employees under any other Act or Acts of Congress.

(Apr. 22, 1908, ch. 149, § 8, 35 Stat. 66.)

§ 59. Survival of right of action of person injured

Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

(Apr. 22, 1908, ch. 149, § 9, as added Apr. 5, 1910, ch. 143, § 2, 36 Stat. 291.)

§ 60. Penalty for suppression of voluntary information incident to accidents; separability of provisions

Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for

each offense: *Provided,* That nothing herein contained shall be construed to void any contract, rule, or regulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports.

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby.

(Apr. 22, 1908, ch. 149, § 10, as added Aug. 11, 1939, ch. 685, § 3, 53 Stat. 1404.)

CHAPTER 3–HOURS OF SERVICE OF EMPLOYEES

Sec.

61. Railroads subject to provisions of this chapter; definitions; time on duty.
62. Employees' hours of service.
    (a) Limitations.
    (b) Determination of service.
    (c) Crew of wreck or relief trains; emergencies; additional duty.
    (d) Applicability.
    (e) "Employees" defined.
63. Dispatcher's hours of service.
    (a) Limitations.
    (b) Determination of service.
    (c) Emergency service.
63a. Signal system employees' hours of service.
    (a) Limitations.
    (b) Determination of service.
    (c) Time on duty.

(d) "Employee" defined.
(e) Applicability.
(f) Emergency service.
64. Maximum hours of service; shorter periods permissible.
64a. Manner of enforcement of this chapter.
(a) Penalty; suits therefor; statute of limitations.
(b) Duty of Secretary of Transportation.
(c) Knowledge imputed to railroad.
(d) Exceptions from operation.
(e) Railroads with not more than fifteen employees; exceptions in public interest; review.
64b. Enforcement by Secretary of Transportation.
65. Establishment of eight hour day.
66. Penalty for violation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 App. section 1655.

§ 61. Railroads subject to provisions of this chapter; definitions; time on duty

(a) This chapter shall apply to any railroad.
(b) For the purposes of this chapter–

(1) The term "railroad" shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et. seq.).

(2) The term "employee" means an individual actually engaged in or connected with the movement of any train, including hostlers.

(3) Time on duty shall commence when an employee reports for duty and terminate when the employee is finally released from duty, and shall include:

(A) Interim periods available for rest at other than a designated terminal;

(B) Interim periods available for less than four hours rest at a designated terminal;

(C) Time spent in deadhead transportation by an employee to a duty assignment: *Provided,* That time spent in deadhead transportation by an employee from duty to his point of final release shall not be counted in computing time off duty;

(D) The time an employee is actually engaged in or connected with the movement of any train; and

(E) Such period of time as is otherwise provided by this chapter.

(4) The term "designated terminal" means the home terminal and the away from home terminal for the assignment of a particular crew. Time on duty shall not include interim rest periods of four or more hours between designated terminals where the employee is prevented from reaching his or her designated terminal by act of God, track obstruction, casualty, derailment or major disabling equipment failure, which derailment or disabling equipment failure was the result of a cause not known to the railroad or its officer or agent in charge of the employee at that time such employee left the designated terminal, and which could not have been foreseen, and only then at a place where suitable facilities for food and lodging are available.

(Mar. 4, 1907, ch. 2939, § 1, 34 Stat. 1415; Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat. 463; July 8, 1976, Pub. L. 94-348, § 4(c), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95-574, §§ 5, 6, 92 Stat. 2461; June 22, 1988, Pub. L. 100-342, § 16(1), 102 Stat. 634.)

REFERENCES IN TEXT

The Federal Railroad Safety Act of 1970, referred to in subsec. (b)(1), is title II of Pub. L. 91-458, Oct, 16, 1970, 84 Stat. 971, as amended, which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 421 of this title and Tables.

AMENDMENTS

1988–Subsec. (a). Pub. L. 100-342, § 16(1)(A), struck out "common carrier engaged in interstate or foreign commerce by" before "railroad".

Subsec. (b)(1). Pub. L. 100-342, § 16(1)(B), substituted 'railroad'" shall have the same meaning as when used in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.)" for 'railroad' includes all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease".

Subsec. (b)(4). Pub. L. 100-342, § 16(1)(C), substituted "railroad" for "carrier".

1978–Subsec. (a). Pub. L. 95-574, § 5, struck out description of interstate and foreign commerce and

provision applying this chapter to officers, agents, and employees of common carriers.

Subsec. (b)(4). Pub. L. 95-574, § 6, added par. (4).

1976–Subsec. (b)(2). Pub. L. 94-348 inserted "including hostlers" after "any train".

1969–Pub. L. 91-169 divided existing provisions, with minor changes, into subsec. (a) and pars. (1) and (2) of subsec. (b) and added par. (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Section 3 of Pub. L. 91-169 provided that: "This Act [amending sections 61 to 64a of this title and enacting section 64b of this title and provisions set out as a note under this section] shall take effect one year after the date of its enactment [Dec. 26, 1969]."

SHORT TITLE

Act Mar. 4, 1907, ch. 2939, 34 Stat. 1415, which enacted this chapter, is popularly known as the "Hours of Service Act".

Act Sept. 3, 5, 1916, ch. 436, 39 stat. 721, which enacted sections 65 and 66 of this title, is popularly known as the "Adamson Law".

SEPARABILITY OF PROVISIONS

Section 2 of Pub. L. 91-169 provided that: "If any provision of the amendment made by the first section of this Act [amending sections 61 to 64 of this title and enacting sections 64a and 64b of this title] is held

invalid, the remainder of such amendment shall not be affected thereby."

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to hours of service of employees under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(e)(2) of Title 49, Appendix, Transportation.

§ 62. Employees' hours of service

(a) Limitations

It shall be unlawful for any railroad, its officers or agents, subject to this chapter–

(1) to require or permit an employee, in case such employee shall have been continuously on duty for fourteen hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty, except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour duty period shall be reduced to twelve hours;

(2) to require or permit an employee to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours;

(3) to provide sleeping quarters for employees (including crew quarters, camp or bunk cars, and trailers) which do not afford such employees an

opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters; or

(4) to begin construction or reconstruction of any sleeping quarters referred to in paragraph (3), on or after July 8, 1976, within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed.

(b) Determination of service

In determining, for the purposes of subsection (a) of this section, the number of hours an employee is on duty, there shall be counted, in addition to the time such employee is actually engaged in or connected with the movement of any train, all time on duty in other service performed for the railroad during the twenty-four-hour period involved.

(c) Crew of wreck or relief trains; emergencies; additional duty

Notwithstanding subsection (a) of this section, the crew of a wreck or relief train may be permitted to be or remain on duty for not to exceed 4 additional hours in any period of 24 consecutive hours whenever an actual emergency exists and work of the crew is related to such emergency. For purposes of this subsection, an emergency ceases to exist when the track is cleared and the line is open for traffic.

(d) Applicability

The provisions of this section shall not apply to an employee during such period of time as the provisions of

section 63 of this title apply to his duty and off-duty periods.

(e) "Employees" defined

As used in subsection (a)(3) of this section, the term "employees" shall include an individual employed for the purpose of maintaining the right-of-way of any railroad.

(Mar. 4, 1907, ch. 2939, § 2, 34, Stat. 1416; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat. 463; July 8, 1976, Pub. L. 94-348, § 4(a), (b), 90 Stat. 818; June 22, 1988, Pub. L. 100-342, §§ 16(2), 19(b)(1), 102 Stat. 634, 638.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (a)(1), is the effective date of Pub. L. 91-169, which was to take effect one year after the date of enactment of Pub. L. 91-169, which was approved Dec. 26, 1969.

AMENDMENTS

1988—Subsecs. (a), (b), Pub. L. 100-342, § 16(2), substituted "railroad" for "common carrier" wherever appearing.

Subsec. (e). Pub. L. 100-342, § 19(b)(1), added subsec. (e).

1976—Subsec. (a)(3), (4). Pub. L. 94-348, § 4(a), added pars. (3) and (4).

Subsec. (c). Pub. L. 94-348, § 4(b), substituted provisions allowing crew of wreck or relief train to remain on duty up to 4 additional hours in any 24 hour period where an emergency situation exists, for provisions relating to applicability of sections 61 and 64b of this title to crews of wreck or relief trains.

1969—Pub. L. 91-169 amended section generally and reduced from 16 to 14 the number of hours an employee can be continuously on duty, with provision for a further reduction in the number of consecutive hours of service to 12 upon the expiration of the two year period beginning on the effective date of subsec. (a)(1), inserted provision requiring at least eight consecutive hours off duty during the 24 hours preceding employee's return to duty, inserted provision for determining what constitutes the number of hours an employee is on duty for the purposes of subsec. (a), exempted crews of wreck or relief trains from the provisions of sections 61 to 64b of this title, inserted provisions rendering section inapplicable when provisions of section 63 of this title apply, and struck out provision setting maximum hours for telegraph operators, train dispatchers, etc., and which authorized Secretary of Transportation to delay application of this section.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 19(b)(2) of Pub. L. 100-342 provided that: "As it applies to interruptions caused by noise under section 2(a)(3) of such Act [subsec. (a)(3) of this section], the amendment made by paragraph (1) [amending this section] shall take effect 180 days after the date of the enactment of this Act [June 22, 1988]."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-169 to take effect one year after Dec. 26, 1969, see section 3 of Pub. L. 91-169, set out as a note under section 61 of this title.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to hours of service of employees under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, which created the Department of Transportation. See section 1655(e)(2) of Title 49, Appendix, Transportation.

SECTION REFERRED TO BY OTHER SECTIONS

This section is referred to in sections 63a, 64a of this title.

§ 63. Dispatcher's hours of service

(a) Limitations

No operator, train dispatcher, or other employee who by the use of the telegraph, telephone, radio, or any other electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements–

(1) shall be required or permitted to be or remain on duty for more than nine hours, whether consecutive or in the aggregate, in any twenty-four-hour period in any tower, office, station, or place where two or more shifts are employed; and

(2) shall be required or permitted to be or remain on duty for more than twelve hours,

whether consecutive or in the aggregate, in any twenty-four-hour period in any tower, office station, or place where only one shift is employed.

(b) Determination of service

For the purposes of subsection (a) of this section, in determining the number of hours an employee is on duty in a class of service, and at a place, described in paragraph (1) or (2) of such subsection, there shall be counted, in addition to the time spent by him on duty in such service at such place, all time on duty in other service performed for the railroad during the twenty-four-hour period involved.

(c) Emergency service

Notwithstanding subsection (a) of this section, in case of emergency the employees named in such subsection may be permitted to be and remain on duty for four additional hours in any period of twenty-four consecutive hours of not exceeding three days in any period of seven consecutive days.

(Mar. 4, 1907, ch. 2939, § 3, 34 Stat. 1416; May 4, 1916, ch. 109, § 1, 39 Stat. 61; Aug. 14, 1957, Pub. L. 85-135, § 2, 71 Stat. 352; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat. 464; June 22, 1988, Pub. L. 100-342, § 16(3), 102 Stat. 635.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-342 substituted "railroad" for "common carrier".

1969–Pub. L. 91-169 amended section generally and substituted provision covering maximum allowable hours for train dispatcher or other employee who receives or delivers orders affecting train movements, for provision setting penalty for violations of maximum hour limits. Penalty provisions in section 64a of this title.

1957–Pub. L. 85-135 substituted "$200" for "$100".

1916–Act May 4, 1961, inserted minimum fine provision.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-169 to take effect one year after December 26, 1969, see section 3 of Pub. L. 91-169, set out as a note under section 61 of this title.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to hours of service of employees under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, which created the Department of Transportation. See section 1655(e)(2) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 63a, 64a of this title.

§ 63a. Signal system employees' hours of service

(a) Limitations

It shall be unlawful for any railroad, its officers or agents, subject to this chapter–

> (1) to require or permit an individual employed by the railroad who is engaged in installing, repairing or maintaining signal systems, in case such individual shall have been continuously on duty for twelve hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty; or
>
> (2) to require or permit an individual described in paragraph (1) to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours.

Whenever the time on duty of an individual is broken or interrupted by any period of time off duty of less than eight consecutive hours, such individual may be on duty for not more than twelve hours during a twenty-four-hour period, if such individual has had at least eight consecutive hours off duty immediately before reporting for duty, or, where required by paragraph (1) of this subsection, at least ten consecutive hours off duty immediately before so reporting. After an individual has been on duty for a total of twelve hours during a period of twenty-four hours as permitted by the foregoing sentence, or at the end of such twenty-four-hour period, whichever occurs first, such individual shall not be required or permitted to continue on duty or to go on duty until he has had at least eight consecutive hours off duty. For purposes of this subsection, a twenty-four-hour period shall begin when an individual reports for duty immediately after he has had at least eight consecutive

hours off duty or, where required by paragraph (1) of this subsection, at least ten consecutive hours off duty.

(b) Determination of service

In determining for the purposes of subsection (a) of this section the number of hours an individual is on duty, there shall be counted, in addition to the time such individual is actually engaged in installing, repairing or maintaining signal systems, all time on duty in other service performed for the railroad during the twenty-four hour period involved

(c) Time on duty

For purposes of this section, time on duty shall commence when an individual reports for duty and terminate when an individual is finally released from duty, except that–

(1) time spent in travel on return from a trouble call, whether directly to the individual's residence or by way of the individual's headquarters, shall be considered neither time on duty nor time off duty, except that up to sixty minutes of such time on return from the final trouble call of a period of continuous or broken service shall be considered time off duty;

(2) if, at the expiration of scheduled duty hours, an individual has not completed the trip from the final outlying worksite of the duty period to the individual's headquarters or from the final outlying worksite directly to the individual's residence, then the time spent in travel outside the scheduled duty hours which is required to complete the trip to such headquarters or directly

to such residence, as the case may be, shall be considered neither time on duty nor time off duty;

(3) if an individual is released from duty at an outlying worksite prior to the end of such individual's scheduled duty hours in order to comply with this section, the period of time required for the trip from the outlying worksite to the individual's headquarters, or the period of time required for the trip from the outlying worksite direct to the individual's residence, as the case may be, shall be considered neither time on duty nor time off duty;

(4) all time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (1), (2), and (3) of this subsection, shall be considered time on duty; and

(5)(A)regularly scheduled meal periods and other release periods of thirty minutes or more up to sixty minutes shall be considered time off duty but shall not break an individual's continuity of service for purposes of this section, and (B) release periods of more than one hour shall be considered time off duty and shall break an individual's continuity of service for purposes of this section.

(d) "Employee" defined

As used in sections 62(a)(3), 64, and 64a of this title, the term "employee" shall be deemed to include an individual employed by the railroad who is engaged in installing, repairing or maintaining signal systems.

(e) Applicability

The provisions of this section shall not apply to an individual during such period of time as the provisions of section 63 of this title apply to his duty and off-duty periods.

(f) Emergency service

Notwithstanding subsection (a) of this section, an individual engaged in installing, repairing, or maintaining signal systems may be permitted to be or remain on duty for not to exceed four additional hours in any period of twenty-four consecutive hours whenever an actual emergency exists and work of the individual is related to such emergency. For purposes of this subsection with respect to the on-duty time of an individual engaged installing, repairing, or maintaining signal systems, an emergency ceases to exist when the signal systems are restored to service.

(Mar. 4, 1907, ch. 2939, § 3A, as added July 8, 1976, Pub. L. 94-348, § 4(d), 90 Stat. 819, and amended Nov. 2, 1978, Pub. L. 95-574, § 4(a), (b), 92 Stat. 2459, 2460; June 22, 1988, Pub. L. 100-342, § 16(4), 102 Stat. 635.)

AMENDMENTS

1988–Subsec. (a) Pub. L. 100-342 substituted "railroad" for "common carrier" in introductory provisions and "railroad" for "carrier" in par. (1).

Subsec. (b). Pub. L. 100-342 substituted "railroad" for "common carrier".

Subsec. (d) Pub. L. 100-342 substituted "railroad" for "carrier".

1978–Subsec. (a). Pub. L. 95-574, § 4(a), inserted provision relating to twelve hour on duty maximum in any twenty-four hour duty period.

Subsec. (c). Pub. L. 95-574, § 4(b), added pars. (1) to (5).

EFFECTIVE DATE OF 1978 AMENDMENT; LIMITATION OF APPLICATION

Section 4(c) of Pub. L. 95-574 provided that: "The amendments made by this section [amending this section] shall be effective as of July 8, 1976, except that no action of conduct which occurred during the period beginning on such date and ending on the date of enactment of this Act [Nov. 2, 1978] and which was lawful under the Hours of Service Act [this chapter] as in effect on July, 8, 1976, shall be deemed to be unlawful under such Act as amended by this Act [Pub. L. 95-574]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 64a of this title.

§ 64. Maximum hours of service; shorter periods permissible

The requirements imposed by this chapter with respect to time on duty of employees are hereby declared to result in the maximum permissible hours of service consistent with safety. However, shorter hours of service and time on duty of employees for lesser periods of time are hereby declared to be proper subjects for collective bargaining between any railroad subject to this chapter and its employees.

(Mar. 4, 1907, ch. 2939, § 4, 34 Stat. 1417; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat. 464; June 22, 1988, Pub. L. 100-342, § 16(5), 102 Stat. 635.)

AMENDMENTS

1988—Pub. L. 100-342 substituted "railroad" for "common carrier".

1969—Pub. L. 91-169 amended section generally and substituted provision expressly allowing shorter work periods than statutory maximum for provision charging Secretary of Transportation with responsibility for enforcing maximum work hours for railroad employees and extending to Secretary all powers granted to Interstate Commerce Commission. Enforcement provisions are contained in section 64b of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-169 to take effect one year after Dec. 26, 1969, see section 3 of Pub. L. 91-169, set out as a note under section 61 of this title.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to hours of service of employees under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, which created the Department of Transportation. See section 1655(e)(2) of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 63a of this title.

§ 64a. Manner of enforcement of this chapter

(a) Penalty; suits therefor; statute of limitations

(1) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) that requires or permits any employee to go, be, or remain on duty in violation of section 62, section 63, or section 63a of this title, or that violates any other provision of this chapter, shall be liable for a penalty of up to $1,000 per violation, as the Secretary of Transportation deems reasonable, except that a penalty may be assessed against an individual only for a willful violation. such penalty shall be assessed by the Secretary of Transportation and, where compromise is not reached by the Secretary under sections 3711 and 3716 to 3718 of title 31, recovered in a suit or suits to be brought by the United States attorney for the judicial district in which the violation occurred, in which the individual defendant resides, or in which the defendant has its principal executive office. It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him. In the case of a violation of section 62(a)(3) or (a)(4) of this title, each day a facility is in noncompliance shall constitute a separate offense. For purposes of this section, an act by an individual that causes a railroad to be in violation of this chapter shall be deemed a violation, and an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor under protest communicated to the supervisor. Such individual shall have the right to document such protest.

(2) No action may be brought under this section after the expiration of the two-year period beginning on the date the violation occurred unless administrative notification pursuant to sections 3711 and 3716 to 3718 of title 31 has been provided to such person within such two-year period, but in no event may any such action be brought after the expiration of the period specified in section 2462 of title 28.

(b) Duty of Secretary of Transportation

It shall be the duty of the Secretary of Transportation to lodge with the appropriate United States attorney information of any violation as may come to the knowledge of the Secretary.

(c) Knowledge imputed to railroad

In all prosecutions under this chapter the railroad shall be deemed to have knowledge of all acts of all its officers and agents.

(d) Exceptions from operation

The provisions of this chapter shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the railroad or its officer or agent in charge of the employee at the time said employee left a terminal, and which could not have been foreseen.

(e) Railroads with not more than fifteen employees; exceptions in public interest; review

With respect to any railroad which employs a total of not more than 15 employees covered by this chapter, the Secretary of Transportation may after full hearing in

any particular case and for good cause shown exempt any such railroad subject to this chapter with respect to one or more of its employees from the limitations imposed by this chapter for a specified period of time, if the Secretary of Transportation finds that such exemption is in the public interest and will not adversely affect safety. Such order is to be subject to review at least annually. In no event shall any such exemption be made for any railroad described in this section to work its employees beyond 16 hours either consecutively or in the aggregate within any 24-hour period.

(Mar. 4, 1907, ch. 2939, § 5, 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat 464; July 8, 1976, Pub. L. 94-348, § 4(e), 90 Stat. 819; Oct. 10, 1980, Pub. L. 96-423, § 12, 94 Stat. 1816; June 22, 1988, Pub. L. 100-342, § 16(6), 102 Stat. 635.)

CODIFICATION

In subsec. (a), "sections 3711 and 3716 to 3718 of title 31" was substituted for "the Federal Claims Collection Act of 1966" and "the Federal Claims Collection Act (31 U.S.C. 951-953)" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance, and Pub. L. 97-452, § 3(b), Jan. 12, 1983, 96 Stat. 2479.

AMENDMENTS

1988–Subsec. (a)(1). Pub. L. 100-342, § 16(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Any common carrier subject to this chapter, or any officer or agent thereof, that requires or permits any employee to go, be, or remain on duty in violation of section 62, section 63, or section 63a of this title, or that violates any other provision of this chapter,

shall be liable for a penalty of $500 for each violation, to be recovered in an action to be brought by the United States attorney in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office. It shall be the duty for the United States attorney to bring such an action upon satisfactory information being lodged with him. In the case of a violation of section 62(a)(3) or (a)(4) of this title, each day a facility is in noncompliance shall constitute a separate offense."

Subsec. (a)(2). Pub. L. 100-342, § 16(6)(B), substituted "such person" for "the common carrier".

Subsec. (c). Pub. L. 100-342, § 16(6)(C), substituted "railroad" for "common carrier".

Subsec. (d). Pub. L. 100-342, § 16(6)(D), substituted "railroad" for "carrier".

1980—Subsec. (a). Pub. L. 96-423 inserted provisions allowing actions to be brought by United States Attorney in district court of the United States for judicial district where defendant has its principal executive office and that, in case of violations of section 62(a)(3) or (a)(4) of this title, each day that a facility is in noncompliance shall constitute a separate offense, and inserted references to administrative notification pursuant to the Federal Claims Collection Act and to expiration of period specified in section 2462 of title 28.

1976—Subsec. (a). Pub. L. 94-348 substituted "section 62, section 63 or section 63a of this title" for "section 62 or section 63 of this title".

1969–Pub. L. 91-169 amended section generally. Prior to amendment, section provided effective date of original enactment.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment effective one year after Dec. 26, 1969, see section 3 of Pub. L. 91-169, set out as a note under section 61 of this title.

PRIOR PROVISIONS

Provisions relating to penalties were contained in section 63 of this title prior to amendment by Pub. L. 91-169.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 63a of this title.

§ 64b. Enforcement by Secretary of Transportation

It shall be the duty of the Secretary of Transportation to carry out the provisions of this chapter.

(Mar. 4, 1907, ch. 2939, § 6, as added Dec. 26, 1969, Pub. L. 91-169, § 1, 83 Stat. 465.)

PRIOR PROVISIONS

Provisions relating to enforcement by the Secretary of Transportation were contained in section 64 of this title prior to amendment by Pub. L. 91-169.

§ 65. Establishment of eight hour day

Eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of subtitle IV of title 49, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a territory to another place in the same Territory, or from any place in the Untied States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States: *Provided,* That the above exceptions shall not apply to railroads though less than one hundred miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads, or are themselves engaged in transfers of freight between railroads, or between railroads and industrial plants.

(Sept. 3, 5, 1916, Ch. 436, § 1, 39 Stat. 721.)

CODIFICATION

"Subtitle IV of title 49" was substituted for "the Act of February fourth, eighteen hundred and eighty-seven, entitled 'An Act to regulate commerce,' as amended [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

Section was enacted as part of act Sept. 3, 5, 1916, popularly known as the Adamson Act, and not as part of act Mar. 4, 1907, popularly known as the Hours of Service Act, which comprises this chapter.

DATE OF APPROVAL

Act Sept. 3, 5, 1916, was approved on Sept. 3 and again on Sept. 5, because Sept. 3 was Sunday, and some doubt existed as to the validity of an act approved on that day.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 66 of this title.

§ 66. Penalty for violation

Any person violating any provision of section 65 of this title shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 and not more than $1,000, or imprisoned not to exceed one year, or both.

(Sept. 3, 5, 1916, ch. 436, § 4, 39 Stat. 722.)

CODIFICATION

Section was enacted as part of act Sept. 3, 5, 1916, popularly known as the Adamson Act, and not as part of act Mar. 4, 1907, popularly known as the Hours of Service Act, which comprises this chapter.

CHAPTER 13–RAILROAD SAFETY

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Sec.

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SUBCHAPTER I–GENERAL PROVISIONS

§ 421. Congressional declaration of purpose

The Congress declares that the purpose of this chapter is to promote safety in all areas of railroad operations and to reduce railroad-related accidents, and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials.

(Pub. L. 91-458, title I, § 101, Oct. 16, 1970, 84 Stat. 971.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix, was repealed by section 113(g) of Pub. L. 93-633, title I, Jan. 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97-468, § 1, Jan. 14, 1983, 96 Stat. 2543, provided: "That titles II through VII of this Act [enacting sections 591, 825a, and 1201 to 1214 of this title and section 59t of Title 33, Navigation and Navigable Waters, amending sections 13, 231, 431, 438, 444, 585, 601, 712, 726, 727, 797c, 802, 825, 827, 829, 853 to 855, 907, 913, 915, 1004, 1005, 1007, 1014, 1017, 1112, and 1113 of this title, sections 305, 3401, 5102, 5342, and

7327 of Title 5, Government Organization and Employees, section 410hh-1 of Title 16, Conservation, section 251 of Title 42. The Public Health and Welfare, sections 10713, 10749, and 10910 of Title 49, Transportation, sections 1654, 1655 of the Appendix to Title 49, repealing sections 17 to 21 and 1008 of this title, section 353a of Title 16, section 208a of Title 30, Mineral Lands and Mining, sections 975, 975a, 975c to 975g of Title 43, Public Lands, and section 301a of Title 48, Territories and Insular Possessions, enacting provisions set out as notes under sections 421, 854, 901, and 1201 of this title and section 10910 of Title 49, and amending provisions set out as notes under section 744a of this title and section 1611 of Title 43] may be cited as the 'Rail Safety and Service Improvement Act of 1982'."

Pub. L. 97-468, title VII, § 701, Jan 14, 1983, 96 Stat. 2579, provided that: "This title [amending sections 13, 431, 438, and 444 of this title and repealing sections 17 to 21 of this title] may be referred to as the 'Federal Railroad Safety Authorization Act of 1982'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-423, § 1, Oct. 10, 1980, 94 Stat. 1811, provided: "That this Act [enacting sections 441, 443, and 444 of this title, amending sections 6, 29, 34, 64a, 431, 432, and 435 to 439 of this title, section 975 of Title 43, Public Lands, and section 26 of Title 49, Appendix, Transportation, repealing former section 441 of this title, and enacting provisions set out as notes under section 431 of this title] may be cited as the 'Federal Railroad Safety Authorization Act of 1980'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-574, § 1, Nov. 2, 1978, 92 Stat. 2459, provided that: "This Act [enacting section 442 of this title, amending sections 6, 13, 34, 61, 63a, 436, 437, and 441 of this title and section 26 of Title 49, Appendix, Transportation, and enacting provisions set out as notes under sections 63a and 440 of this title] may be cited as the 'Federal Railroad Safety Authorization Act of 1978'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-348, § 1, July 8, 1976, 90 Stat. 817, provided that: "This Act [enacting section 63a of this title and section 1652a of former Title 49, Transportation, amending sections 6, 13, 34, 61, 62, 64a, 431, and 441 of this title and sections 26 and 1653 of former Title 49, and enacting provisions set out as notes under this section and section 952 of former Title 31, Money and Finance] may be cited as the 'Federal Railroad Safety Authorization Act of 1976'."

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94-56, § 1, July 19, 1975, 89 Stat. 263, provided: "That this Act [amending sections 440 and 441 of this title and section 1812 of Title 49, Appendix, Transportation] may be cited as the 'Federal Railroad Safety Authorization Act of 1975'."

Pub. L. 93-633, title II, § 201, Jan. 3, 1975, 88 Stat. 2164, provided that: "This title [amending sections 39, 437, 438, 440, and 441 of this title, and enacting provisions set out as a note under section 440 of this title] may be cited as the 'Rail Safety Improvement Act of 1974'."

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-90, § 1, Aug. 14, 1973, 87 Stat. 305, provided: "That this Act [amending section 441 of this title and section 1762 of Title 49, Appendix, Transportation, and enacting provisions set out as a note under section 1762 of Title 49, Appendix] may be cited as the 'Federal Railroad Safety Authorization Act of 1973'."

SHORT TITLE

Section 201 of Pub. L. 91-458, title II, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Federal Railroad Safety Act of 1970'."

SEPARABILITY OF PROVISIONS

Sections 401 of Pub. L. 91-458 provided that: "If any provision of this Act [enacting this chapter and chapter 26 of Title 49, Appendix, Transportation] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 11125.

SUBCHAPTER II–RULES, REGULATIONS ORDERS, AND STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 442 of this title.

§ 431. Promulgation of rules, regulations, orders, and standards

(a) Authority of Secretary; collective bargaining agreements under Railway Labor Act as consistent with rules, etc.

The Secretary of Transportation (hereafter in this subchapter referred to as the "Secretary") shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on October 16, 1970, and (2) conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. However, nothing in this subchapter shall prohibit the bargaining representative of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act [45 U.S.C. 151 et seq.] including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this subchapter. Nothing in this subchapter shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

(b) Hearings

Hearings shall be conducted in accordance with the provisions of section 553 of title 5 for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety rules, regulation, order, or standard under this subchapter, and an opportunity shall be provided for oral presentations.

(c) Waiver of compliance; authority of Secretary

The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this subchapter, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) Consideration by Secretary of relevant existing safety data and standards; development and publication of rules of practice applicable to proceedings

In prescribing rules, regulations, orders, and standards under this section, the Secretary shall consider relevant existing safety data and standards and shall, within 180 days after July 8, 1976, take such action as may be necessary to develop and publish rules of practice applicable to all proceedings under this chapter. Such rules of practice shall take into consideration the varying nature of proceedings under this chapter and shall include specific time limits upon the disposition of all proceedings initiated under this chapter. In no event shall the time limit for any such proceeding extend for

more than 12 months after the date such proceeding is initiated.

(e) Time for issuance; review and revision by Secretary

The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this subchapter based upon existing safety data and standards, not later than one year after October 16, 1970. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.

(f) Judicial review

Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5.

(g) Restricted access to rolling equipment during inspection, testing, etc. and visibility of rear car of trains; requirements; enforcement of State laws, etc.

The Secretary shall, within 180 days after July 8, 1976, issue such rules regulations, orders, and standards as may be necessary to require that–

(1) in any case in which activities of railroad employees (other than train or yard crews) assigned to inspect, test, repair, or service rolling equipment require such employees to work on, under, or between such equipment, each manually operated switch, including any crossover switch, providing access to the track on which such equipment is located must be lined against movement to that track and secured by an effective

locking device which may not be removed except by the class or craft of employees performing such inspection, testing, repair, or servicing.

(2) the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during ~~periods of~~ darkness or whenever weather conditions restrict clear visibility; and

(3) the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility.

Notwithstanding the provisions of section 434 of this title, nothing in paragraphs (2) and (3) of this subsection shall prohibit a State from continuing in force any law, rule, regulation, order or standard in effect on July 8, 1976, relating to lighted markers on the rear car of freight trains except to the extent that such law, rule, regulation, order, or standard would cause such cars to be in violation of this section.

(h) Safety of railroad passenger equipment

(1)(A) The Secretary shall, within one year after January 14, 1983, issue such initial rules, regulations, orders, and standards as may be necessary to insure that the construction, maintenance, and operation of railroad passenger equipment maximize safety to rail passengers. The Secretary shall, as a part of any such rule-making, consider comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration. The Secretary shall also consider relevant differences between commuter and intercity

passenger service. The Secretary shall periodically review any such rules, regulations, orders, and standards and shall, after a hearing in accordance with subsection (b) of this section, make such revisions in any such rules, regulations, orders, and standards as may be necessary.

(B) The secretary shall submit to the Congress a report within one year after January 14, 1983, with respect to rules, regulations, orders, and standards issued under subparagraph (A) of this paragraph which describes any rules, regulations, orders, and standards issued or to be issued under this subsection, explains the reasons for their issuance, and compares them to comparable Federal regulations and procedures which apply to other modes of transportation, especially those administered and enforced by the Federal Aviation Administration.

(2) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary shall–

(A) concentrate on those areas which, in the judgment of the Secretary, present the greatest opportunity for enhancing the safety of railroad passenger equipment; and

(B) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to alter specifications for equipment on order;

(3) In issuing initial rules, regulations, orders, and standards under this subsection, and in making any subsequent revisions thereto, the Secretary may consult with the National Railroad Passenger Corporation, public authorities that operate passenger service, other

rail carriers that transport passengers, organizations of passengers, and organizations of employees. Such consultations shall not be subject to the Federal Advisory Committee Act, but minutes of such consultations shall be placed in the public docket of the rule making proceeding.

(4) As used in this subsection, the term "railroad passenger equipment" means all railroad equipment used for the transportation of passengers, whether in commuter or intercity service.

(i) Safety of track used for commuter or other short-haul rail passenger service in a metropolitan or suburban area

The Secretary shall, within one year after January 14, 1983, issue rules, regulations, orders, and standards to apply appropriate safety principles to track used for commuter or other short-haul rail passenger service in a metropolitan or suburban area.

(j) Mounted oscillating light; report to Congress requiring train to be equipped with acceptable form

The Secretary shall, within 60 days after January 14, 1983, report to the Congress on whether to issue riles, regulations, orders, and standards to require that the leading car of any railroad train in operation after July 1, 1983, be equipped with an acceptable form of mounted oscillating light.

(k) "All areas of railroad safety" defined

As used in this section, the term "all areas of railroad safety" includes the safety of commuter or other

short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979.

(Pub. L. 91-458, title II, § 202, Oct. 16, 1970, 84 Stat. 971; Pub. L. 94-348, § 5, July 8, 1976, 90 Stat. 819; Pub. L. 96-423, § 14, Oct. 10, 1980, 94 Stat. 1817; Pub. L. 97-468, title VII, § 702(a), (c), Jan. 14, 1983, 96 Stat. 2579.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix, was repealed by section 113(g) of Pub. L. 93-633, title I, Jan. 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(3), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (h)(1), Pub. L. 97-368, § 702(a), designated existing provisions as subpar. (A), in (A) as so designated, substituted "that the" for "the safe" after

"to insure", added "maximize safety to rail passengers" after "passenger equipment", added the requirements that the Secretary consider comparable Federal regulations and procedures and the difference between commuter and intercity passenger service, and added subpar. (B).

Subsecs. (i) to (k). Pub. L. 97-468, § 702(c), added subsecs. (i) to (k).

1980—Subsec. (h). Pub. L. 96-423 added subsec. (h).

1976—Subsec. (d). Pub. L. 94-348. § 5(a), added requirement that Secretary take action as may be necessary to develop and publish rules of practice applicable to all proceedings under this chapter, which take into consideration varying nature of proceedings and include specific time limits not to exceed 12 months upon disposition of proceedings.

Subsec. (g). Pub. L. 94-348, § 5(b), added subsec. (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 17 of Pub. L. 96-423 provided that:

"(a) Except as provided in subsection (b) of this section, the provisions of this Act [enacting sections 441, 443, and 444 of this title, amending sections 6, 29, 34, 64a, 431, 432, and 435 to 439 of this title, section 975 of Title 43, Public Lands, and section 26 of Title 49, Appendix, Transportation, repealing former section 441 of this title, and enacting provisions set out as notes under this section and section 421 of this title] shall take effect on the date of enactment of this Act. [Oct. 10, 1980].

"(b) Section 11 of this Act shall take effect on October 1, 1980, or on the date of enactment of this Act [Oct. 10, 1980], whichever is later."

STUDIES AND REPORTS

Section 16 of Pub. L. 96-423 provided that:

"(a) The Secretary of Transportation shall conduct a study regarding employee training in the railroad industry as it affects railroad safety. Among other factors, such study shall consider to appropriate Federal role, if any, in such training, and the adequacy of such training. The results of such study, together with recommendations for any necessary legislation, shall be submitted to the Congress by December 31, 1980.

"(b)(1) The Secretary of Transportation shall make every possible effort to expedite promulgation of a final rule regarding the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers. In the event that such rule is not promulgated prior to December 31, 1980, the Secretary of Transportation shall submit to the Congress a status report with respect to such rule, indicating the Federal Railroad Administration's activities to such date, the current status of such rule, and estimate as to when a final rule will be promulgated.

"(2) Whenever the Secretary of Transportation submits a status report pursuant to the provisions of paragraph (1) of this subsection, or when the Federal Railroad Administration promulgates a final rule with respect to the retrofitting of Department of Transportation specification one hundred and five tank cars with shelf couplers, the Secretary shall transmit to the Congress any other recommendations and

anticipated action by the Department of Transportation with respect to the retrofitting of such tank cars.

"(c)(1) The Secretary of Transportation shall submit to the Congress a systems safety plan relating to the activities of the Department of Transportation in carrying out rail safety laws. The Secretary shall complete such plan at the earliest possible date, but in no event shall the study be submitted later than January 31, 1981.

"(2) As part of the plan submitted to the Congress under paragraph (1) of this subsection, the Secretary of Transportation shall develop a methodology to determine frequency and schedules of safety inspections, giving appropriate priority to track and equipment involved with passenger trains and hazardous cargos. Such methodology shall further take into consideration safety records of the rail carriers, location of track and equipment in population centers, volume of usage of track and equipment, and any other factors that the Secretary considers relevant to railroad safety."

EVALUATION OF FEDERAL RAILROAD SAFETY PROGRAM BY OFFICE OF TECHNOLOGY ASSESSMENT

Pub. L. 94-348, § 7, July 8, 1976, 90 Stat 820, provided that:

"(a) The Office of Technology Assessment shall conduct a study of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.) and related Federal laws to evaluated their effectiveness in improving the safety of our Nation's railroads. Such study and evaluation shall include, but shall not be limited to–

"(1) a cost-benefit analysis of the railroad safety research and development activities under the Federal Railroad Safety Act of 1970 and related Federal laws;

"(2) an evaluation of trends with respect to railroad employee injuries and casualties, injuries and casualties to other persons, accidents by type and cause, and such other data as the Office of Technology Assessment considers necessary to determine any significant statistical relationship between safety practices, expenditures, penalties for violation of Federal railroad safety laws and regulations, and accident rates;

"(3) a statistical comparison of railroad accidents reported by each railroad for the 10-year period preceding the date of enactment of this Act [July 8, 1976];

"(4) the cost-benefit and effectiveness of accident prevention resulting from the methodology used and practices employed by Federal and State railroad safety inspectors under Federal railroad safety laws and regulations;

"(5) an evaluation of safety inspection activities conducted by the railroad industry;

"(6) an evaluation and analysis of industry research and development relating to railroad safety and accident prevention;

"(7) a cost-benefit analysis of the various Federal laws and regulations relating to railroad safety; and

"(8) the need for additional Federal expenditures for improvements in railroad safety.

"(b) The Office of Technology Assessment shall, within 18 months after the date of enactment of this Act [July 8, 1976], submit a report to the Congress containing the results of the study conducted pursuant to this section, together with recommendations for such legislative or other action as such Office considers appropriate.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 432, 435, 440, 1207 of this title.

§ 432. Emergency powers

(a) Emergency situations; order of Secretary; abatement of situation

If the Secretary determines, on the basis of testing, inspection, investigation, or research carried out pursuant to this subchapter, that an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons, the Secretary may immediately issue an order, without regard to the provisions of section 431(b) of this title, imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation.

(b) Review

After the issuance of an order under this section, opportunity for review of such order shall be provided in accordance with section 554 of title 5.

(c) Thirty-day period for administrative review

If a petition for review of an order has been filed under subsection (b) of this section but administrative review of such order has not been completed by the end of the thirty-day period beginning on the date such order was issued, such order shall cease to be effective at the end of such period unless the Secretary determines in writing that the emergency situation remains in existence.

(d) Standards and procedures for relief

In issuing any order under this section, the Secretary shall describe the conditions or practices which create an emergency situation (as determined by the Secretary), and shall establish standards and procedures under which relief from such order may be obtained. Nothing in this subsection shall be construed to affect the discretion of the Secretary under this section to maintain an order in effect until the emergency situation has been abated.

(e) Judicial relief if Secretary fails to act

Any employee of a common carrier by railroad engaged in interstate or foreign commerce who may be exposed to imminent physical injury in the course of his employment because of the Secretary's failure, without any reasonable basis, to seek relief under subsection (a) of this section, or the authorized representative of such

an employee, shall have the right to bring an action against the Secretary in the United States district court for the judicial district in which the emergency situation is alleged to exist or in which the emergency situation is alleged to exist of in which the employer has its principal executive office, or for the District of Columbia, to compel the Secretary to issue an order under this section. The failure of the Secretary to seek relief under subsection (a) of this section shall be reviewed solely under the standards of section 706 of title 5.

(Pub. L. 91-458, title II, § 203, Oct. 16, 1970, 84 Stat. 972; Pub. L. 96-423, § 3, Oct. 10, 1980, 94 Stat. 1811.)

AMENDMENTS

1980—Pub. L 96-423 designated existing provisions as subsecs. (a) and (b), substituted references to unsafe conditions or practices or combinations of unsafe conditions or practices or both for former references to facilities or pieces of equipment in unsafe condition in subsec. (a) as so designated, and added subsecs. (c), (d), and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L 96-423, set out as a note under section 431 of this title.

§ 433. Grade crossings and railroad rights-of-way; comprehensive study and recommendations of means of elimination and protection

(a) The Secretary shall submit to the President for transmittal to the Congress, within one year after

October 16, 1970, a comprehensive study of the problem of eliminating and protecting railroad grade crossings, including a study of measures to protect pedestrians in densely populated areas along railroad rights-of-way, together with his recommendations for appropriate actions including, if relevant, a recommendation for equitable allocation of the economic costs of any program proposed as a result of such study.

(b) In addition the Secretary shall insofar as practicable, under the authority provided by this subchapter and pursuant to his authority over highway, traffic, and motor vehicle safety, and highway construction, undertake a coordinated effort toward the objective of developing and implementing solutions to the grade crossing problem, as well a measures to protect pedestrians in densely populated areas along railroad rights-of-way.

(Pub. L. 91-458, title II, § 204, Oct. 16, 1970, 84 Stat. 972.)

§ 434. National uniformity of laws, rules, regulations, orders, and standards relating to railroad safety; State regulation

The Congress declares that laws, rules regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially

local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

(Pub. L. 91-458, title II, § 205, Oct. 16, 1970, 84 Stat. 972.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 431 of this title.

§ 435. Investigative and surveillance activities by State

(a) Preconditions to State participation; annual certification by State agency to Secretary of activities; authority of Secretary to assess and compromise penalties, request injunctive relief, and recommend appropriate action

A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulations, order, or standard prescribed by the Secretary under this subchapter if the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency–

(1) has regulatory jurisdiction over the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order and standard, applicable to any such railroad facility, equipment, rolling stock, or operation, established under this subchapter as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 436 of this title) to request injunctive relief for the violation of rules, regulations, orders, and standards prescribed by the Secretary under section 431(a) of this title and to recommend appropriate action as provided by sections 438 and 439 of this title.

(b) Report in annual certification; contents; determination by Secretary of compliance of State agency with prescribed activities; procedure for rejection of certification or enforcement action

Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing–

(1) the name and address of each railroad subject to the safety jurisdiction of the State agency;

(2) all accidents or incidents reported during the preceding twelve months by each railroad involving

personal injury requiring hospitalization, fatality, or property damage exceeding $750 or such other high amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident;

(3) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders and standards prescribed by him under section 431(a) of this title, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(4) such other information as the Secretary may require.

The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily complying with the investigative and surveillance activities prescribed by him with respect to such safety rules, regulations, orders, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification, in whole or in part, or take such other action as he deems appropriate to achieve adequate enforcement. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily complying with the investigative and surveillance activities prescribed by the Secretary with respect to such safety rules, regulations, orders, and standards.

(c) Agreements with noncertifying States for State agency action; procedure for termination of agreements

With respect to any railroad facility, equipment, rolling stock, or operation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the investigative and surveillance activities prescribed by the Secretary as necessary to obtain compliance with any Federal safety rule, regulation, order or standard applicable to any such railroad facility, equipment, rolling stock, or operation. An agreement entered into under this subsection, or any provision thereof, may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to provide all or any part of the investigative and surveillance activities to which the agreement relates. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

(d) Expenditures by Federal Government for State programs; maximum amount; preconditions

Upon application by any State agency which has submitted a certification under subsection (a) of this section, or entered into an agreement under subsection (c) or (g) of this section, the Secretary shall pay, out of funds appropriated pursuant to this subchapter or otherwise made available, up to 50 per centum of the cost of the personnel, equipment, and activities of such State agency reasonably required, during the ensuing fiscal year, to carry out a safety program under such certification or agreement. No such payment may be

made unless this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for the safety program will be maintained at a level which doe snot fall below the average level of such expenditures for the last two fiscal years preceding October 16, 1970.

(e) Monitoring by Secretary of State investigative and surveillance practices

The Secretary is authorized to conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this subchapter.

(f) Applicability of certification to new or amended rule, regulation, order, or standard

The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for railroads established under this subchapter after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection.

(g) Investigation and surveillance

In addition to the provisions for State participation set forth in subsections (a) and (c) of this section, the Secretary may enter into agreements with any State to

provide investigative and surveillance activities with respect to those functions transferred to the Secretary by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix.

(Pub. L. 91-458, title II, § 206, Oct. 16, 1970, 84 Stat. 972; Pub. L. 96-423, § 4, Oct. 10, 1990, 94 Stat. 1812.)

AMENDMENTS

1980–Subsec. (d). Pub. L. 96-423, § 4(b), added reference to agreements under subsec. (g) of this section.

Subsec. (g). Pub. L. 96-423, §(a), added subsec. (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 436, 440, 444 of this title.

§ 436. Enforcing compliance with Federal railroad safety rules, regulations, orders, and standards

(a) Civil penalty; application for judicial assessment and collection

(1) In any case in which the Secretary has failed to assess the civil penalty applicable under section 438 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this subchapter or under any law transferred by section

1655(e)(1), (e)(2), or (e)(6)(A) of title 49, Appendix, within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 435 of this title, that State agency may apply to the United Stated district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that no violation has occurred.

(b) Application by State agency for injunctive relief when Secretary fails to commence action

(1) In any case in which the Secretary has not commenced an action for injunctive relief under section 439 of this title with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this subchapter or under any law transferred by section 1655(e)(1), (e)(2), or (e)(6)(A) of title 49, Appendix, within 15 days after the date on which the Secretary received notification of the violation, together with a request that an injunctive action be instituted, from a State agency participating in investigative and surveillance activities under the provisions of section 435 of this title, that State agency may apply to the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for injunctive relief to restrain further violation of such rule, regulation, order, or standard.

(2) The provisions of this subsection shall not apply in any case in which the Secretary has affirmatively determined in writing that (A) no violation has occurred, or (B) an action for injunctive relief is not necessary because of other enforcement action undertaken by the Secretary with respect to the subject violation.

(c) United States district courts within the State

A State agency may not bring an action under this section in any United States district court located outside the boundaries of the state.

(Pub. L. 91-458, title II, § 207, Oct. 16, 1970, 84 Stat. 974; Pub. L. 95-574, § 8, Nov. 2, 1978, 92 Stat. 2461; Pub. L. 96-423, § 5, Oct. 10, 1980, 94 Stat. 1812.)

AMENDMENTS

1980—Pub. L. 96-423 designated existing provisions as subsec. (a), and in subsec. (a) as so designated, reduced the time limit from 90 days to 60 days after the date on which notification was received by the Secretary, and added subsecs. (b) and (c)

1978—Pub. L. 95-574 changed the date for application to district court for enforcement order from 90 days from occurrence of a violation to 90 days from date notification of such violation is received by the Secretary.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-3423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 438, 439 of this title.

§ 437. General powers

(a) Authority of Secretary

In carrying out his functions under this subchapter, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluations, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this subchapter. The Secretary is further authorized to issue orders directing compliance with this chapter or with any railroad safety rule, regulation, order, or standard issued under this chapter; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) Inspection and examination of rail facilities and records by officers, employees, or agents of Secretary; credentials; status as Federal employees

To carry out the Secretary's responsibilities under this subchapter and under the functions transferred by

section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, officers, employees, or agents of the Secretary are authorized to enter upon, inspect, and examine rail facilities, equipment, rolling stock, operations, and pertinent records at reasonable times and in a reasonable manner. Such officers, employees, or agents shall display proper credentials when requested, and during the course of such inspection or examination shall be considered employees of the Federal Government for purposes of chapter 171 of title 28.

(c) Force and effect of orders, rules, regulations, standards, and requirements for purposes of determining liability of common carriers by railroad for injuries to employees

All orders, rules, regulations, standards, and requirements in force, or prescribed or issued by the Secretary under this subchapter, or by any State agency which is participating in investigative and surveillance activities pursuant to section 435 of this title, shall have the same force and effect as a statute for purposes of the application of sections 53 and 54 of this title, relating to the liability of common carriers by railroad for injuries to their employees.

(d) Transferred functions formerly vested in Interstate Commerce Commission

(1) In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 1655 (e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to, conducting investigations, making reports, issuing

subpoenas, requiring production of documents, taking depositions, and prescribing recordkeeping and reporting requirements. The Secretary is further authorized to issue orders directing compliance with the laws transferred by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, or with any regulation or order issued thereunder.

(2) The district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce by appropriate means any order issued by the Secretary under paragraph (1) of this subsection.

(Pub. L. 91-458, title II, § 208, Oct. 16, 1970, 84 Stat. 974; Pub. L. 93-633, title II, § 206, Jan 3, 1975, 88 Stat. 2166; Pub. L. 95-574, § 9 Nov. 2, 1978, 92 Stat. 2462; Pub. L. 96-423, § 6 Oct. 10, 1980, 94 Stat. 1813.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix, was repealed by section 113(g) of Pub. L. 93-633, title I, Jan. 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1980–Subsec. (b). Pub. L. 96-423, § 6(a), added reference to the Secretary's responsibilities under the functions transferred by section 1655(e)(1), (e)(2),and (e)(6)(A) of title 49, Appendix.

Subsec. (d) Pub. L 96-423, § 6(b), added subsec. (d).

1978–Subsec. (b). Pub. L. 95-574, § 9(1), (2), redesignated subsec. (c) as (b) and, as so redesignated, deleted reference to National Transportation Safety Board and added provision that during the inspection the officers shall be considered employees of the Federal Government for purposes of chapter 171 of title 28. Former subsec. (b), relating to authority of the National Transportation Safety Board, was struck out.

Subsecs. (c), (d). Pub. L. 95-574, § 9(1). redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

1975–Subsec. (a) Pub. L. 93-633 authorized issuance of compliance orders and empowered federal district courts to enforce such orders.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 439 of this title.

§ 438. Civil penalties

(a) Unlawful acts

It shall be unlawful for any railroad to fail to comply with any rule, regulation, order, or standard prescribed by the Secretary under this subchapter.

(b) Amount

The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this subchapter a civil penalty for violation thereof or for violation of section 39 of this title in such amount, not less than $250 nor more than $2,500, as he deems reasonable.

(c) Assessment by Secretary; separate offense; procedure for recovery; compromise by Secretary; amount as deductible from any sums owed by United States to violator; payment into Treasury

Any railroad violating any rule, regulation, order, or standard referred to in subsection (b) of this section shall be assessed by the Secretary the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States for the judicial district in which such violation occurred or in which the defendant has its principal executive office. Civil penalties may, however, be compromised by the Secretary for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section, prior to referral to the Attorney General. The amount of any such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to

the person charged. All penalties collected under this subchapter, including penalties collected pursuant to section 436 of this title, shall be covered into the Treasury as miscellaneous receipts.

(d) Subpoenas for witnesses

In any action brought under this subchapter, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(e) Criminal penalty for false reporting

Any person who knowingly and willfully–

(1) makes a false entry in any record or report required under this subchapter to be made, prepared, or preserved;

(2) destroys, mutilates, changes, or by another means falsifies any such record or report;

(3) does not enter required specified facts and transactions in any such record or report;

(4) makes, prepares, or preserves any such record or report in violation of a regulation or order issued under this subchapter; or

(5) files a false record or report with the Secretary.

shall be fined not more than $5,000, or imprisoned for not more than two years, or both.

(Pub. L. 91-458, title II, § 209, Oct. 16, 1970, 84 Stat. 975; Pub. L. 93-633, title II, § 204(a), Jan. 3, 1975, 88 Stat. 2165; Pub. L. 96-423, §§ 7, 8(a), Oct. 10, 1980, 94 Stat. 1814; Pub. L. 97-468, title VII, § 706, Jan. 14, 1983, 96 Stat. 2581.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 97-468 substituted "fail to comply with" for "disobey, disregard, or fail to adhere to" after "any railroad to".

1980—Subsec. (c). Pub. L. 96-423, § 8(a) substituted "for the judicial district in which such violation occurred or in which the defendant has its principal executive office" for "having jurisdiction in the locality where such violation occurred".

Subsec. (e) Pub. L. 96-423, § 7, added subsec. (e).

1975—Subsec. (b). Pub. L. 93-633 made provision for a civil penalty for violation of section 39 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 435, 436 of this title.

§ 439. Injunctive relief

(a) Procedures and jurisdiction

The United States district court shall, at the request of the Secretary and upon petition by the Attorney General on behalf of the United States, or upon application by a State agency pursuant to section 436 of this title, have jurisdiction, subject to the provisions of rules 65(a) and (b) of the Federal Rules of Civil Procedures, to restrain violations of this subchapter and to restrain violations of or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix.

(b) Criminal contempt proceedings

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section or under section 436 of this title, which violation also constitutes a violation of this subchapter, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Judicial districts where action may be brought

Subject to section 437(d)[1] of this title, any action under subsection (a) of this section may be brought in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office.

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[1]See Codification note below.

(Pub. L. 91-458, title II, § 210, Oct. 16, 1970, 84 Stat. 975; Pub. L. 96-423, § 9, Oct. 10, 1980, 94 Stat. 1814.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 42, of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

In subsec. (c), "section 437(d) of this title" was in the original "section 297(d) of this title", meaning section 207(d) of title II of Pub. L. 91-458. Because section 27, which enacted section 436 of this title, contains no subsec. (d), section 207(d) has been editorially translated as section 437(d) of this title, as the probable intent of Congress, in view of the subject matter of section 437(d) of this title.

AMENDMENTS

1980–Subsec. (a). Pub. L. 96-423, § 9(a), added reference to the restraining of violations of and the enforcement of rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix.

Subsec. (c). Pub. L. 96-423, § 9(b), added subsec. (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-423 effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as a note under section 431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 436 of this title.

§ 440. Annual report by Secretary

(a) Contents

The Secretary shall prepare and submit to the President for transmittal to Congress on or before July 1 of each year a comprehensive report on the administration of this subchapter for the preceding calendar year. Such report shall include, not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties by cause occurring in such year;

(2) a list of Federal railroad safety rules, regulations, orders, and standards issued under this subchapter in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 431(c) of this title during such year;

(4) an evaluation of the degree of observance of applicable railroad safety rules, regulations, orders, and standards issued under this subchapter;

(5) a summary of outstanding problems confronting the administration of Federal railroad safety rules, regulations, orders, and standards issued under this subchapter in order of priority;

(6) an analysis and evaluation of research and related activities completed (including the policy implications thereof) and technological progress achieved during such year;

(7) a list, with a brief statement of the issues of completed or pending judicial actions for the enforcement of any Federal railroad safety rule, regulation, order, or standard issued under this subchapter;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of–

(A) certifications filed by State agencies under section 435(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 435(a) of this title which were rejected in whole or in part, by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of–

(A) agreements entered into with State agencies under section 435(c) of this title

which were in effect during the preceding calendar year,

(B) agreements entered into under section 435(c) of this title which were terminated by the Secretary, in whole or in part, during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) Recommendations for additional legislation

The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to strengthen the national railroad safety program

(c) Special report by Secretary

The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall–

(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this chapter are in effect (as of June 30, 1975);

(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this subchapter (as of June 30, 1975);

(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this chapter (as of June 30, 1975);

(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation or problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 435 of this title;

(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including–

(A) State program development;

(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to

projections under subparagraphs (B) and (C) of this paragraph;

(E) the sources from which the State expects to draw the funds to finance such programs; and

(F) the amount of State funds and of Federal financial assistanec[2] needed during each such fiscal year, by category;

(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State government, and the Federal Government;

(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program;

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[2]So in original. Probably should be "assistance".

(10) contain a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.] specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

(11) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this chapter.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other personnel having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.

(Pub. L. 91-458, title II, § 211, Oct. 16, 1970, 84 Stat. 976; Pub. L. 93-633, title II § 203, Jan 3, 1975, 88 Stat. 2164; Pub. L. 94-56, § 2, July 19, 1975, 89 Stat. 263; Pub. L. 96-470, title II, § 209(a), Oct. 19, 1980, 94 Stat. 2245.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), (3), and (11), was in the original "this Act", meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix was repealed by section 113(g) of Pub. L. 93-633, title I, Jan 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

The Hazardous Materials Transportation Act, referred to in subsec. (c)(10), is Pub. L. 93-633, title I, Jan 3, 1975, 88 Stat. 2156, as amended, which is classified principally to chapter 27 (§ 1801 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 49, Appendix, and Tables.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-470 substituted "July 1" for "May 1".

1975—Subsec. (c). Pub. L. 93-633 added subsec. (c)

Subsec. (c)(10), (11). Pub. L. 94-56 added par. (10) and redesignated former par. (10) as (11).

RAIL TRANSPORTATION SAFETY AND EFFICIENCY STUDY

Pub. L. 95-574, § 10, Nov. 2, 1978, 92 Stat. 2462, provided that the Secretary of Transportation conduct a study and evaluation concerning the safety and efficiency of rail transportation, which study and evaluation was to

include, a determination of the relationship of the size, weight, and length of the railroad cars (other than those contained in unit trains) to the safety and efficiency of rail transportation, and a determination of the effect of the exclusive ownership and control of rights-of-way by individual railroads on the safety and efficiency of rail transportation, considering among other things, whether or not such rights-of-way might be better employed under new structures of ownership or other conditions for joint usage, and within 2 years after Nov. 2, 1978, complete the study and submit a report to the Congress setting forth the results together with recommendations for such legislative or other action as deemed appropriate.

CONGRESSIONAL DECLARATION OF POLICY

Section 202 of Pub. L. 93-633 provided that: "The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 [this subchapter] requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation."

§ 441. Protection and rights of employees

(a) Filing of complaints; institution of proceedings; testimony

A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee because such employee, whether acting in his own behalf or in a representative capacity, has–

(1) filed any complaint or instituted or caused to be instituted any proceeding under or related to the enforcement of the Federal railroad safety laws; or

(2) testified or is about to testify in any such proceeding

(b) Refusal to work under hazardous conditions

(1) A common carrier by railroad engaged in interstate or foreign commerce may not discharge or in any manner discriminate against any employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if–

(A) the refusal is made in good faith and no reasonable alternative to such refusal is available to the employee;

(B) the hazardous condition is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that–

(i) the condition presents an imminent danger of death or serious injury; and

(ii) there is sufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory channels; and

(C) the employee, where possible, has notified his employer of this apprehension of such hazardous condition and of his intention not to

perform further work unless such condition is corrected immediately.

(2) The provisions of this subsection shall not apply to security personnel employed by a railroad to protect persons and property transported by such railroad.

(c) Resolution of disputes

(1) Any dispute, grievance, or claim arising under this section shall be subject to resolution in accordance with the procedures set forth in section 153 of this title.

(2) In the case of any violation of subsection (a) or (b) of this section, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 153 of this title shall, where appropriate, award back pay to the aggrieved employee and order such employee reinstated to his position.

(d) Election of remedies

Whenever an employee of a railroad is afforded protection under this section and under any other provision of law in connection with the same allegedly unlawful act of an employer, if such employee seeks protection he must elect either to seek relief pursuant to this section or pursuant to such other provision of law.

(e) "Federal railroad safety laws" defined

As used in this section, the term "Federal railroad safety laws" means this chapter, the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.), and those laws transferred to the jurisdiction of the Secretary

of Transportation by subsection (e)(1), (2) and (6)(A) of section 1655 of title 49, Appendix.

(Pub. L. 91-458, title II, § 212, as added Pub. L. 96-423, § 10, Oct. 10, 1980, 94 Stat. 1815.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original "this Act', meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which enacted this chapter and chapter 26 (§ 1761 et seq.) of Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix, was repealed by section 113(g) of Pub. L. 93-633, title I, Jan, 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.), referred to in subsec. (e), is Pub. L. 93-633, title I, Jan. 3, 1975, 88 Stat. 2156, as amended, which is classified principally to chapter 27 (§ 1801 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 49, Appendix, and Tables.

PRIOR PROVISIONS

A prior section 441, Pub. L. 91-458, title II, § 212, Oct. 16, 1970, 84 Stat. 977; Pub. L. 93-90, § 2, Aug. 14, 1973, 87 Stat. 305; Pub. L. 93-633, title II, § 205, Jan 3, 1975, 88 Stat. 2166; Pub. L. 94-56, § 3, July 19, 1975, 89 Stat. 263; Pub. L. 94-348, § 2(a), July 8, 1976, 90 Stat. 817; Pub. L. 95-574, § 2, Nov. 2, 1978, 92 Stat. 2459, which authorized appropriations to carry out this chapter, was repealed by Pub. L. 96-423, § 2, Oct. 10, 1980, 94 Stat. 1811. See section 444 of this title.

EFFECTIVE DATE

Section effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as an Effective Date of 1980 Amendment note under section 431 of this title.

§ 442. Limitations on funding

Not less than 50 percent of the funds appropriated to the Secretary of Transportation for any fiscal year to conduct railroad research and development programs under the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] or any other Act shall be available for safety research, improved track inspection and data acquisition technology, improved track inspection and data acquisition technology, improved rail freight service, and improved rail passenger systems.

(Pub. L. 95-574, § 3, Nov. 2, 1978, 92 Stat. 2459.)

REFERENCES IN TEXT

The Federal Railroad Safety Act of 1970, referred to in text, is Pub. L. 91-458, title II, Oct. 16, 1970, 84 Stat. 971, as amended, which is classified generally to this subchapter (§ 431 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

CODIFICATION

Section was enacted as part of the Federal Railroad Safety Authorization Act of 1978, and not as a part of the Federal Railroad Safety Act of 1970 which comprises this subchapter.

§ 443. Pay classifications

Notwithstanding any other provision of law–

(1) the position held by a fully experienced and qualified railroad safety inspector employed by the Department of Transportation shall be classified in accordance with chapter 51 of title 5, but not lower than Grade GS-12 of the General Schedule; and

(2) the position held by a railroad safety specialist employed by the Department of Transportation shall be classified in accordance with chapter 51, of title 5, but not lower than Grade GS-13 of the General Schedule.

(Pub. L. 91-458, title II, § 213, as added Pub. L. 96-423, § 11, Oct. 10, 1980, 94 Stat. 1816.)

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 10, 1980, see section 17(b) of Pub. L. 96-423, set out as an Effective Date of 1980 Amendment note under section 431 of this title.

§ 444. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $38,000,000 for the fiscal year ending September 30,

1981, and not to exceed $27,650,000 for the fiscal year ending September 30, 1982.

(b) The amounts appropriated under subsection (a) of this section for a fiscal year shall be available for expenditure in such fiscal year as follows:

(1) For the Office of Safety, including salaries and expenses for not more than (A) six hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) one hundred and twenty-five clerical personnel, not to exceed $22,500,000 for the fiscal year ending September 30, 1981, and not to exceed $24,000,000 for the fiscal year ending September 30, 1982. Such funds shall be available for travel expenses of safety inspectors for not less than twenty days per month.

(2) To carry out the provisions of section 435(d) of this title, relating to State safety programs, not to exceed $2,000,000 for the fiscal year ending September 30, 1981, and not to exceed $2,500,000 for the fiscal year ending September 30, 1982.

(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000.

(4) For conducting safety research and development activities under this chapter, not to exceed $10,000,000, of which not less than $500,000 shall be available for assisting in the treatment of alcohol and drug abuse problems of railroad employees.

(c)(1) There are authorized to be appropriated to carry out the provisions of this chapter, except section

435(d) of this title and paragraph (3) of this subsection, not to exceed $29,300,000 for the fiscal year ending September 30, 1983, and not to exceed $31,400,000 for the fiscal year ending September 30, 1984.

(2) To carry out the provisions of section 435(d) of this title relating to State safety programs, there are authorized to be appropriated not to exceed $2,700,000 for the fiscal year ending September 30, 1983, and not to exceed $2,900,000 for the fiscal year ending September 30, 1984.

(3) For the purpose of conducting safety research and development activities under this chapter, there are authorized to be appropriated not to exceed $20,000,000 for the fiscal year ending September 30, 1983, and not to exceed $21,000,000 for the fiscal year ending September 30, 1984, including funds for assisting in the treatment of alcohol and drug abuse problems of railroad employees.

(d) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expended.

(Pub. L. 91-458, title II, § 214, as added Pub. L. 96-423, § 2, Oct. 10, 1980, 94 Stat. 1811, and amended Pub. L. 97-35, title XI, § 1195, Aug. 13, 1981, 95 Stat. 702; Pub. L. 97-468, title VII, § 703, Jan. 14, 1983, 96 Stat. 2580.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(4), and (c)(1), (3), was in the original "this Act", meaning Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which enacted this chapter and chapter 26 (§ 1761 et seq.) of

Title 49, Appendix, Transportation. Chapter 26 of Title 49, Appendix, was repealed by section 113(g) of Pub. L. 93-633, title I, Jan 3, 1975, 88 Stat. 2163. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1983—Subsecs. (c), (d). Pub. L. 97-468 added subsec. (c) and redesignated former subsec. (c) as (d).

1981—Subsec. (a). Pub. L. 97-35 substituted "$27,650,000" for "$40,000,000".

EFFECTIVE DATE

Section effective Oct. 10, 1980, see section 17(a) of Pub. L. 96-423, set out as an Effective Date of 1980 Amendment note under section 431 of this title.

UNITED STATES CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS

100th Congress–Second Session
1988

Convened January 25, 1988
Adjourned October 22, 1988

Volume 4

LEGISLATIVE HISTORY:
PUBLIC LAWS 100-293 to 100-418

ST. PAUL, MINN.
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EXPLANATION

The Second Session of the 100th Congress convened on January 25, 1988; the House and the Senate adjourned sine die on October 22, 1988.

This permanent edition of the 1988 U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS includes the Public Laws enacted at the Second Session of the 100th Congress, Legislative History, Proclamations, and Executive Orders.

Legislative History

Official committee reports, conference reports, joint explanatory statements, and statements by legislative leaders on major bills are set out explaining the background, history, and purpose of legislation enacted at the Second Session of the 100th Congress. Verbatim bill language contained in the reports along with charts, maps, and lengthy appendices not referring to the legislation under consideration are omitted.

The Legislative History is a popular and exclusive feature of the U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS. It is important and indispensable in ascertaining Congressional intent when the laws come up for construction and interpretation by the Courts. It is equally important and indispensable to the legal practitioner in studying and reviewing new legislation as the basis for advising his clients. The Legislative History is directly referenced under the law to which it pertains and is fully covered in the Index.

As an insight into the Executive intent relative to a particular public law, Signing Statements by the

President are also printed immediately following the reports and statements referred to above.

Federal Tax Regulations

The current Federal Tax Regulations appearing in the several pamphlets throughout the year have been integrated into the special volumes of Federal Tax Regulations, 1989.

Tables and Index

The Tables show particularly the various sections of the official U.S. Code and U.S. Code Annotated affected by the laws. They further show where all the new general and permanent laws are allocated in the U.S. Code and U.S.C.A.

A comprehensive and detailed index appearing in the seventh volume provides convenient and dependable access to all features of the 1988 U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS.

LEGISLATIVE HISTORY
SENATE REPORT N0. 100-153

RAIL SAFETY IMPROVEMENT ACT OF 1988

P.L. 100-342, see page 102 Stat. 624

DATES OF CONSIDERATION AND PASSAGE

Senate: November 5, 1987; June 9, 1988

House: December 18, 1987; February 3, May 23, 1988

Senate Report (Commerce, Science, and Transportation Committee)

No. 100-153, Sept. 1,1987 [To accompany S. 1539]
House Conference Report No. 100-637, May 19, 1988 [To accompany S. 1539]

Cong. Record Vol. 133 (1987)
Cong. Record Vol. 134 (1988)

No House Report was submitted with this legislation. The Senate Report is set out below and the House Conference Report (page 708) follows.

SENATE REPORT NO. 100-153

[page 1]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1539) to amend the Federal Railroad Safety Act of 1970 and for other purposes, having considered the same, reports

favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The bill, S. 1539, as reported, would reauthorize the Federal rail safety program for two years, in the sum of $40,649,000 for fiscal year 1988 and in the sum of $41,868,470 for fiscal year 1989. The bill would also make certain changes and improvements in the Federal Railroad Safety Act of 1970.

BACKGROUND AND NEEDS

The Department of Transportation (DOT), acting through the Federal Railroad Administration (FRA), is responsible for rail safety. The Federal Railroad Safety Act of 1970 consolidated and clarified DOT's regulatory authority over all areas of railroad safety, and granted broad inspection, injunctive and penalty powers. To supplement the Federal enforcement effort, the Federal Railroad Safety Act of 1970 also established a State safety grant-in-aid program whereby the Federal Government reimburses the States for up to 50 percent of the costs of State safety inspectors,

[page 2]

with the States having certain investigative, surveillance, and enforcement powers with respect to Federal safety laws. Thirty-one States currently receive State participation grants.

LEGISLATIVE HISTORY
SENATE REPORT N0. 100-153

The 1970 Safety Act has been amended several times to focus and strengthen DOT's rail safety program. However, the authorizations for the FRA safety program and the State participation program expired at the end of fiscal year 1984 and attempts to reauthorize the programs have been unsuccessful. In spite of this, both programs have continued in operation through funds appropriated for these purposes.

In 1984, the Senate Commerce Committee approved a reauthorization of the Federal rail safety program, although this legislation was not acted upon by the full Senate. Subsequently, during the 99th Congress, the Senate and the House each approved rail safety authorization legislation, although final action on an authorization bill was not achieved due to an unresolved controversy over amendments included in the House bill.

Recently, rail safety has received a great deal of additional attention, much of it arising out of the collision on January 4, 1987, between an Amtrak train the three Conrail locomotive units. This accident, near Chase, MD, resulted in 16 deaths and over 170 injuries. The incident has focused attention on a number of issues including alcohol and drug testing, qualifications and licensing of railroad operating personnel, the adequacy of the current Federal safety and enforcement mechanisms, and the safety of railroad passenger traffic.

LEGISLATIVE HISTORY

The Surface Transportation Subcommittee has held two hearings on the issue of rail safety during this

Congress. On February 17, 1987, Senator Exon chaired the subcommittee's initial hearing on this topic, during which testimony was received regarding the overall level of safety in the rail industry. On June 2, 1987, Senator Exon chaired a second hearing on the issues of rail safety. This hearing focused on the experiences of railroad workers in the safety area and on legislative proposals by the FRA, Senator Frank Lautenberg, and rail labor.

Witnesses who testified at one or both of these hearings included representatives of the FRA; the National Transportation Safety Board; the Railway Labor Executives' Association (RLEA), and the Association of American Railroads. Other witnesses included a panel of railroad workers representing various crafts, the father of one of the victims killed in the Amtrak/Conrail collision, Senator Lautenberg and Representative Cardiss Collins.

On July 23, 1987, as a product of these hearings, Senator Exon introduced S. 1539, the Railroad Safety Act of 1987. Cosponsors of this measure included Senators Hollings, Danforth, and Kasten. Other measures introduced in the area of rail safety and referred to the Committee include S. 1098, introduced by Senator Lautenberg and cosponsored by Senator Mikulski, and S. 1558, the FRA's rail safety proposal which was introduced by Senator Kasten by request.

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LEGISLATIVE HISTORY
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On July 28, 1987, the Committee met in open executive session to consider S. 1539. This measure was ordered reported, with one objection relating to penalties, after adoption of an amendment to increase the supplemental remedy in the bill from $5,000 to $10,000 in damages, including punitive damages, that may be assessed against a railroad for harassment of an employee who reports a safety violation.

SUMMARY OF MAJOR PROVISIONS

This legislation seeks to reauthorize the Federal rail safety program at levels sufficient to ensure that the program is continued in full force. These levels should also ensure funding necessary to enable the FRA to undertake the safety improvements required in this legislation. This bill does not include certain provisions proposed by the FRA, and others by the RLEA for which there was insufficient documentation in terms of safety need. Nor were provisions included in this bill which the Committee believes are better addressed through collective bargaining or by rulemaking. The limited amount of funds available to the FRA requires the Committee to determine its safety priorities carefully and to avoid efforts that could divert resources or otherwise adversely affect the FRA and State inspection and enforcement efforts.

As reported, S. 1539 would:

1. Reauthorize the Federal rail safety program for two years in the sum of $40,649,000 for fiscal year 1988 and $41,868,470 for fiscal year 1989;

2. Authorize the FRA to sanction and penalize individuals for violations of the Federal safety laws;

3. Increase the current maximum civil penalty of $2500 per day per violation to a new maximum of $10,000 per day per violation;

4. Require the FRA to conduct a rulemaking and implement a program within 18 months to ensure proper training and qualifications of individuals who operate trains;

5. Provide access to the National Driver Register (NDR) for railroad employers, prospective employers, and the FRA;

6. Expedite consideration of grievance claims and authorize supplemental damages, including punitive damages, not to exceed $10,000 for harassment of an employee for reporting of safety violations;

7. Make certain safety-related improvements on Amtrak eligible for funding under the Northeast Corridor Improvement Project;

8. Clarify the FRA's jurisdiction over the safety of high-speed rail systems;

9. Clarify that the FRA's subpoenas and orders are enforceable in federal courts; and

10. Require the FRA to study and report to Congress on a proposal to assess user fees to cover the costs of the Federal rail safety and railroad noise control programs.

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ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1987.

HON. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1539, the Railroad Safety Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1539.

2. Bill title: Railroad Safety Act of 1987.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, July 28, 1987.

3. Bill purpose: S. 1539 would authorize appropriations of $40.6 million and $41.9 million in fiscal years 1988 and 1989, respectively, for rail safety activities of the Department of Transportation. Congress appropriated $36.7 million for this program in fiscal year 1987.

This bill would make a number of substantive amendments to the Federal Railroad Safety Act of 1970. It would give the Federal Railroad Administration (FRA) the authority to apply rail safety laws to individuals, as well as railroads, and would require the FRA to establish a program ensuring minimum qualification for operators of railroads. In addition, an amendment to the National Driver Register Act would provide rail employers and the FRA with access to information in the register concerning employees and potential employees. S. 1539 would also require the FRA to prepare a report to the Congress on the need

and feasibility of user fees to fund federal rail safety activities.

Another section in the bill would amend the Railroad Revitalization and Regulatory Reform Act of 1976 to make a number of additional projects eligible for funding under the Northeast Corridor Improvement Program. No additional funding would be authorized for this program, however.

5. Estimated cost to the Federal Government:

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[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization Level	40.65	41.87			
Estimated Outlays	30.48	39.50	9.39	2.08	1.07

The costs of this bill fall within budget function 400.

Basis of estimate: CBO assumed that the full amounts authorized will be appropriated. The authorization levels are those specified in the bill. Estimated outlays are based on historical spending patterns.

6. Estimated cost to State and local governments: States would bear some increased administrative burden as a result of the provision authorizing access to the

National Driver Register. The Department of Transportation has contracted with four states to conduct a project to test a new system that would handle inquiries concerning motor vehicle operators, as required by the National Driver Register Act of 1982. This new system will eventually be extended to other states, depending on the results of the pilot project and the availability of funds in future years. While it is still early to estimate the incremental cost to states for also handling inquiries regarding rail employees, CBO does not expect it to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Majorie Miller.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation grants new authority to the FRA for application of the Federal rail safety laws to employees (management and labor) of the railroad

industry who perform services covered under the Hours of Service Act or who perform in other safety-sensitive positions. The Committee estimates that approximately 174,000 individuals would be covered by this legislation.

ECONOMIC IMPACT

The economic impact of the legislation will primarily affect the FRA, railroad companies, and railroad employees. With respect to the FRA, under the bill's provisions granting the FRA authority to sanction individuals (management and labor) for rail safety violations, the FRA likely would incur some additional enforcement costs, which would be somewhat offset by the actual amounts collected as fines. The FRA also could incur some additional administrative and research costs to comply with the rulemaking requirement to issue Federal minimum qualifications for train operators.

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Some additional resources might also be expended by the FRA to conduct a study on the need to impose user fees as a source of funding for the Federal railroad safety and noise control programs. Costs related to the overall Federal safety program and the State inspection programs are accounted for in the authorization section of the bill, which continues these programs essentially at the existing level and thus would have no significant budgetary impact.

With respect to the railroad companies, increased penalties could be imposed on railroad companies found

in violation of railroad safety laws. The current maximum civil penalty of $2,500 per day per violation set in 1970 would be increased to $10,000. Additionally, an anti-harassment provision in the bill would provide employees a supplemental Railroad Labor Act remedy of up to $10,000 in damages, including punitive damages, paid by a railroad to an employee harassed by that railroad for reporting safety violations.

Under the bill's provisions granting the FRA authority to sanction and impose civil penalties against individuals for violations of the safety laws, such individuals would incur costs associated with penalties and related administrative and judicial review processes.

PRIVACY

The bill's provision allowing employers, prospective employers, and the FRA to access the NDR may be construed by some affected as an invasion of privacy. However, the Committee believes access to records that may show a series of serious traffic infractions is useful in determining the fitness of an individual to serve in a safety-sensitive position with a railroad. Individuals would have an opportunity to comment on these records, and any circumstances that could mitigate the import of the violation could be brought to the attention of employers, prospective employers, and the FRA.

LEGISLATIVE HISTORY
SENATE REPORT N0. 100-153

PAPERWORK

With respect to paperwork requirements, the Committee does not foresee a significant increase in the current level as a result of this legislation unless the FRA decides to establish a Federal licensing program for train operators after the rulemaking process mandated in the bill on train operator qualifications is completed. However, some paperwork would be required because at a minimum, railroads will have to submit documentation to the FRA showing that they have qualification programs for train operators which are in compliance with Federal guidelines and meet standards necessary to ensure safety and the fitness of those operating trains.

SECTION-BY-SECTION ANALYSIS

SECTION 1.–SHORT TITLE

This section provides that the legislation is to be entitled the "Railroad Safety Act of 1987."

SECTION 2.–AUTHORIZATION FOR APPROPRIATIONS

This section would amend section 214 of the Federal Railroad Safety Act of 1970 (Safety Act) to authorize funding for fiscal years 1988 and 1989 for the Federal rail safety program. A total of

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$40,649,000 would be authorized for the FRA's general safety operations and State grants in fiscal year 1988, and sums not to exceed $41,868,470 would be authorized for these purposes for fiscal year 1989.

The fiscal year 1988 authorization level was requested by the administration and represents a $2,290,000 funding increase over the fiscal year 1987 appropriation level. It assumes funding in the sum of $1,350,000 for continuation of the State safety grant-in-aid program for fiscal year 1988. The fiscal year 1989 authorization figure takes into account projected inflation of three percent over the fiscal year 1988 authorization levels for the Federal safety and State participation programs.

This section recognizes that the FRA's rail safety program has been generally successful in improving the overall level of rail safety in recent years. However, the Committee is of the opinion that additional steps need to be taken to further improve rail safety. The authorization levels contained in this section should provide the FRA with the resources needed to continue the current Federal safety programs and to make additional improvements such as those set forth in this legislation.

SECTION 3.–INCREASED PENALTIES; LIABILITY OF INDIVIDUALS

This section would amend section 209 of the Safety Act to provide the Secretary of Transportation (Secretary) with authority to sanction and penalize

individuals for violations of the Federal safety laws. It would also increase the current maximum civil penalty of $2,500 to a new maximum of $10,000.

Subsection (a) would amend the Safety Act to provide the Department of Transportation, acting through the FRA, with enforcement authority over "persons", which include both railroads and any individual who performs service under the Hours of Service Act or who performs other safety-sensitive functions for a railroad.

At present, the FRA's enforcement authority is limited to actions against railroad companies for violations of Federal safety laws and regulations. Railroad companies are then left to seek appropriate disciplinary action against any employee whose conduct results in a violation.

The Committee is of the opinion, however, that this procedure is not adequate to ensure safety since it depends upon individual railroads to remedy violations through private disciplinary proceedings and thereby fails to provide the certain enforcement that is necessary when safety is at issue. This procedure also denies Federal inspectors and enforcement officials the direct authority they need to see that violations of safety laws, regulations, rules and orders are addressed. For these reasons, this legislation authorizes the FRA to take direct enforcement action against individuals, as well as railroad companies. It would not otherwise affect private proceedings as between railroads and their employees.

The grant of enforcement authority accorded by this legislation is not unique among our safety laws. Rather, it is the current absence of Federal safety enforcement authority over individuals involved in general rail transportation that is out of the ordinary when compared with other transportation modes. For example, in

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the aviation sector, the Federal Aviation Administration has the authority to take action against individuals for aviation safety violations. Similarly, the Federal Government and the States share direct enforcement authority over operators of commercial motor vehicles. Even in the rail mode, the FRA has a measure of authority over individuals who violate the Hazardous materials Transportation Act or its regulations. This legislation would ensure that the FRA has direct authority to pursue all violations involving rail safety, not just those in the area of hazardous materials.

In delineating individuals who would be subject to FRA enforcement authority, this section identifies those employees now covered by the Hours of Service Act and other employees who perform safety-sensitive functions, as those functions are determined by the Secretary. Employees covered by the Hours of Service Act include: (1) those engaged in or connected with the movement of any train (primarily including engineers, brakemen, firemen, and conductors); (2) those who dispatch, report, transmit, or receive orders pertaining to or affecting

train movements (such as operators and dispatchers); and (3) those engaged in installing, repairing, or maintaining signal systems (such as signalmen and certain electricians).

In addition, the bill would cover others who perform safety-sensitive functions, as those functions are determined by the Secretary. In determining which employees shall be considered to serve in safety-sensitive positions, the Secretary shall consider the need to include: (1) those who install, repair, or maintain track and roadbed; (2) those who inspect, maintain, or repair train equipment (locomotives and cars); (3) those responsible for conducting training and testing (including alcohol and drug testing) of employees required by the FRA's safety regulations; and (4) those responsible for properly reporting accidents and injuries. This bill is also intended to apply to railroad managers, supervisors, and agents when they perform these functions and when they could be in a position to direct that violations of the regulations be committed.

Subsection (b) would amend the Safety Act to provide that for violations of any safety rule, regulation, order, or standard, the FRA may assess a civil penalty of not less than $250 nor more than $10,000, as the Secretary deems reasonable. The current maximum civil penalty of $2,500 per day per violation was set in 1970, and the Committee is of the opinion that the maximum penalty level should be increased to account for the effects of inflation since 1970, and to serve as a better deterrent against the commission of safety violations.

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances. In imposing penalties against individuals, the Secretary should also give particular attention to an individual's ability to pay, as provided for in Federal claims collection guidelines.

Subsection (c) provides that any person violating any such rule, regulation, order, or standard may be assessed the civil penalty applicable to the standard violated. However, it further provides that a willful violation is necessary for any assessment of a civil penalty against an individual. Thus, negligent actions by individuals would

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not subject them to monetary penalties. By limiting the assessment of civil penalties against individuals to instances involving willful violations of safety rules, regulations, standards, or orders, the Committee is thereby ensuring that civil penalties will only be imposed in those situations where an individual has a choice, and freely elects to violate a safety rule, regulation, standard, or order.

This subsection further provides that penalties may be recovered through suits brought in the district court of the United States for the judicial district in which such individual resides. It is the Committee's

understanding that in pursuing the imposition of civil penalties, the FRA attempts to resolve penalty assessments through negotiation and that court proceedings are only pursued in the event that a resolution cannot be obtained.

In this regard, the Committee contemplates that the Secretary would issue specific guidelines that would ensure fairness when the FRA seeks to exercise its civil penalty authority over an individual. These procedures should recognize differences that may exist between a railroad's ability to defend itself in a proceeding of this sort and the ability of an individual to do so. The Committee would expect that at minimum procedures be put in place to ensure that individuals are properly notified and have the opportunity to respond to actions under this subsection. The Committee would expect the FRA to consider these same factors in making a decision to seek judicial relief, recognizing the burden on individuals that could result from such an action.

This section also substitutes the word "may" for the word "shall" in the operative civil penalty provision. This would clarify the Secretary's authority to use discretion in determining when to assess penalties against railroads and individuals.

Subsection (d) would amend the Safety Act to provide the Secretary with the authority to direct that an individual be prohibited from serving in a safety-sensitive capacity in the rail industry for a necessary period of time if, after notice and opportunity for a hearing, the Secretary determines that an individual has violated a

safety rule, regulation, order, or standard, as would indicate such individual is unfit for performance of a safety-sensitive task.

This subsection would authorize the Secretary to remove unfit employees from safety-sensitive positions on a railroad. As with the civil penalty authority, this includes management and supervisory personnel, in addition to other rail workers.

Under the process envisioned by this subsection, it would not be necessary to depend upon a railroad's internal disciplinary process to ensure that employees who are unfit for service are removed from safety-sensitive positions. Pursuant to the subsection, the Secretary would have the burden to prove that an employee's violation of a safety law, rule, regulation, standard, or order indicates that such individual is unfit for performance of a safety-sensitive task. If that burden were met, after notice and opportunity for an administrative hearing, with the attendant protection guaranteed thereby, the Secretary could order any appropriate sanction, from suspension to disbarment from safety-related functions.

Under this subsection, as contrasted with the civil penalty authority addressed in subsection (c), the Secretary would not have to prove that a violation was willful. Rather, any action, including

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negligent actions, would be grounds for an appropriate sanction which responds to the gravity of a particular violation, the likelihood that another violation would occur, and the risk to safety that could occur were the individual to serve or continue to serve in a safety-sensitive position.

Under this procedure, an employee would be entitled to a complete, on-the-record hearing, and the Secretary's decision would be judicially reviewable. This section also reaffirms the Secretary's ability to take emergency action under section 203 of the Safety Act where an employee poses an imminent danger of death or injury if the employee were to continue to work in his or her job.

SECTION 4.–QUALIFICATIONS OF OPERATORS OF TRAINS

This section would amend section 202 of the Safety Act to ensure that within 18 months after the date of enactment of this subsection, the Secretary shall issue rules, regulations, standards, and orders concerning the minimum qualifications of operators of trains. (These employees are referred to as engineers on most railroads. However, because terminology differs and because there is no intent to limit these regulations to members of any specific labor organizations, the term "train operators" is used to refer to those who actually operate the controls of the locomotive of a moving train.) At present, there are no Federal programs, standards, or guidelines in place regarding the qualifications of train operators. The Committee is of

the opinion that this is a shortcoming in our Federal safety program since there currently is no certainty that these individuals are properly trained or qualified to serve in these highly safety-sensitive positions.

In hearings held before the Surface Transportation Subcommittee, several witnesses addressed the need for Federal standards for operators of trains. This need was not expressed in a manner to suggest that engineers or other operators of trains are generally unqualified to perform their assigned duties. Rather, what causes concern is the lack of any means to ensure that these individuals are properly trained or fit to serve in these positions. The absence of a Federal program for operators of trains has also been contrasted with Federal programs that are currently in place to ensure that operators of aircraft and commercial motor carriers are qualified for their service in similarly safety-sensitive positions.

In this section, the Committee is not intending to specify the particular means that must be chosen to ensure that operators of trains are properly trained and fit for service. Testimony before the Surface Transportation Subcommittee vaired, for example, as to whether a requirement for formal Federal licensing of engineers is necessary or whether other procedures might be adopted to ensure that operators are qualified. Concerns were also raised regarding the cost to the Federal Government of a licensing program and its impact on the FRA's current operations.

In recognition of the careful attention that needs to be given to a variety of considerations in regard to this issue, yet keeping in mind the Committee's strong interest in ensuring the fitness of operators, the Committee has provided the FRA with the discretion to determine which among a range of options might best serve to

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ensure that operators of trains are qualified. Options specified in this legislation for consideration by the FRA include the establishment of an engineer licensing program, uniform minimum qualification standards, and a program of review and approval of each railroad's qualification standards.

In analyzing these options the FRA should give consideration both to the adequacy of a program that would ensure that operators are properly trained and also to the need to ensure that individual operators satisfy any Federal fitness requirements, including physical and medical requirements, that might be established for these important safety-related positions. In regard to fitness, the FRA shall consider procedures that might be necessary to enable the FRA to determine the extent to which individual operators satisfy Federal qualifications. Means that might satisfy this range from reporting requirements to provisions for FRA access to records for review as necessary to determine that a particular operator satisfies Federal standards.

In an effort to follow the FRA's progress in this regard, this section also provides for a report to Congress on this proceeding no later than 12 months after the date of enactment of this legislation. This report would include an evaluation of anticipated results of the proceeding.

SECTION 5.–ACCESS TO THE NATIONAL DRIVER REGISTER

This section would amend section 206 of the National Driver Register Act of 1982 to provide increased access to information contained in the NDR.

Subsection (a) would allow an individual who is employed by or who seeks employment with a railroad and who performs or would perform services covered by the Hours of Service Act or other safety-sensitive functions as determined by the Secretary to request the chief driver licensing official of a State to transmit NDR information about the individual to the individual's employer, prospective employer, or the FRA.

The NDR is not accessible when an individual applies for a driver's license or seeks to operate a commercial motor vehicle. In the rail safety hearings before the Surface Transportation Subcommittee, consideration was also given to the use of information regarding an individual's record of driver's license suspensions, revocations, or similar actions as an indication of the fitness of an individual to serve in a safety-sensitive position with a railroad. Testimony before the subcommittee indicated that to the extent this

information may be available through individual States, this information is neither widely nor uniformly available, nor are there guidelines for its use.

The Committee is of the view that railroad safety could be improved through uniform access to information regarding revocations, suspensions, or other driving-related activities. For this reason, this legislation authorizes individuals to request that NDR information by provided to their employer, prospective employer, or the FRA.

This section simply provides for statutory access to these records. It is intended that any decisions on when or how to use such date

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for purposes of determining the qualifications of Hours of Service or other safety-sensitive personnel would be the subject of future rulemaking conducted on the public record. The Committee intends that when the FRA conducts such a rulemaking, consideration should be given to the appropriate uses for this information. Specifically, the FRA should set guidelines on the need for access to this information and its relevance as an indicator of the fitness of an individual to serve in a safety-sensitive position. It may be expected, for example, that information in the NDR might have more relevance or be given greater weight in determining the fitness of an operator of a train than for individuals in other positions with a railroad.

Under this section, the Federal Railroad Administrator, employer, or prospective employer would make NDR information available to the individual, who would be given an opportunity to comment on its in writing. This would enable an individual to explain or seek to mitigate the impact of an otherwise poor driving record. This subsection also provides that access to information which was entered in the NDR more than three years before the date of a request would be prohibited, unless the information related to suspensions or revocations still in effect on the date of the request.

Subsection (b) would clarify the access to information submitted to the existing NDR by States during the transition to the new NDR contemplated by current law.

SECTION 6.–PROTECTION OF EMPLOYEES AGAINST DISCRIMINATION

The Committee is opposed to discrimination or harassment of railroad employees for any reason. In particular harassment of an employee for reporting or testifying regarding a safety violation should be strongly discouraged. Railroad safety can best be achieved if employees work in an environment in which they feel free to come forward and report safety violations and unsafe conditions which they may observe. To protect employees against harassment or discrimination, this section would amend section 212 of the Safety Act to provide for expediting of any proceeding with respect to a dispute, grievance, or claim for improper discharge or discrimination and which arises from an employee's

filing of a complaint, institution of a proceeding, or testifying regarding the enforcement of the railroad safety laws. Any such dispute shall be resolved by the Adjustment Board or any other Board of Adjustment created under section 3 of the Railway Labor Act, within 180 days after its filing.

In addition, current law limits damages for discrimination to those cases in which the discrimination results in a discharge, suspension, loss of pay, or other monetary damages. However, harassment can take many forms and can have an equally chilling effect on an employee's willingness to report safety violations even if the discrimination does not result in a direct job or monetary loss. For this reason and to protect against other forms of harassment, this section also provides that if the discrimination against an employee is in a form other than discharge, suspension, or loss of pay, and if no other remedy is available, the appropriate Board may award the

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aggrieved employee reasonable damages, including punitive damages, up to a maximum total of $10,000.

SECTION 7.–NORTHEAST CORRIDOR IMPROVEMENT PROJECT

This section would amend section 704 of the Railroad Revitalization and Regulatory Reform Act of 1976 to make eligible for funds provided under the

Northeast Corridor Improvement Program certain Amtrak-related safety projects, including: improvements to communication and signal systems; improvement in electric traction systems; the installation of baggage rack restraints, seat back guards, and seat lock devices on certain passenger cars operating within the Northeast Corridor; the installation of event recorders and electronic warning devices on locomotives operating within the Northeast Corridor; the acquisition of cab signal test boxes; and installation of wayside loop code transmitters for use on the Northeast Corridor.

SECTION 8.–JURISDICTION OVER HIGH SPEED RAIL SYSTEMS

This section would amend section 202 of the Safety Act to ensure that all forms of non-highway ground transportation that run on rails or electromagnetic guideways, except for certain urban transit operations, shall be subject to the Safety Act. This provides the DOT and the FRA with jurisdiction over newly emerging technologies and high speed rail systems.

This section also incorporates into its definition of "railroad" the language added to the Safety Act in 1983 concerning commuter and other short-haul passenger service. In addition, this section would strike from section 202 a number of subsections that relate to statutory mandates, already met, for regulations or reports on specific subjects.

SECTION 9.–ENFORCEMENT OF SUBPOENAS AND ORDERS

This section would amend section 208 of the Safety Act to confirm the Attorney General's authority to seek enforcement of orders and subpoenas issued by the Secretary under section 208(a) and of emergency safety orders issued under section 203 of the Safety Act, through a proceeding in an appropriate federal district court. The Safety Act authorizes the Secretary to issue such directives when necessary to achievement of the safety program, but except for the provision on compliance orders, has no express provision for the enforcement of such directives. This technical amendment would make express the Attorney General's implicit authority to seek enforcement of such subpoenas and orders.

SECTION 10.–STUDY

The FRA has proposed that railroads be assessed user fees to recover costs associated with the Federal rail safety and railroad noise control programs. However, the Committee is of the opinion that a record has not been developed to justify the imposition of user fees at this time. For this reason, this section provides that no later than six months after enactment, the Secretary shall report to the Congress on the need and feasibility of imposing user fees as a source of funding the cost of administering the Safety Act and

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other Federal laws relating to railroad safety and railroad noise control.

SECTION 11.–CONFORMING AMENDMENTS

This section would amend section 202 of the Safety Act and the general grant to the Secretary of regulatory authority over railroad safety to clarify that this authority would extend to railroad employees.

SECTION 12.–MISCELLANEOUS

This section would strike existing section 211(c) of the Safety Act because it concerns details of a special report on railroad safety that was required for submission to the Congress in 1976, an obligation which has been fulfilled.

* * * *

HOUSE CONFERENCE REPORT NO. 100-637

* * * *

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1539) to amend the Federal Railroad Safety Act of

1970 and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. SHORT TITLE

Senate bill

Designates short title as "Railroad Safety Act of 1987".

House amendment

Designates short title as "Rail Safety Improvement Act of 1987".

Conference agreement

House amendment with a technical amendment. Designates short title as "Rail Safety Improvement Act of 1988".

2. AUTHORIZATION

Senate bill

Authorizes the appropriation of $40,649,000 in FY 1988 and $41,868,470 in FY 1989.

House amendment

Authorizes the appropriation of the same amounts as the Senate bill in FY 1988 and FY 1989 respectively, as well as $44,381,000 in FY 1990. Authorizes sums for research and development, automated track inspection, and state safety grant program to remain available until expended.

Conference agreement

House amendment.

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3. INDIVIDUAL LIABILITY

Senate bill

Extends jurisdiction of the Secretary over safety violations from railroads alone under current law to any person, including a railroad or an individual covered by

the Hours of Service Act or who performs other safety-sensitive functions as determined by the Secretary, including all aspects of railroad employees' safety-related behavior. Provides that any person committing a violation "may" be assessed the applicable civil penalty by the Secretary, except that a penalty may be assessed against an individual only for willful violations. Provides that action to recover a penalty against an individual may be brought in the judicial district in which individual resides. Provides that an individual shall not be deemed to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor. In addition, gives the Secretary authority, after notice and opportunity for a hearing, to bar an individual from performing safety-sensitive functions in the rail industry under terms specified by the Secretary where a violation indicates that such individual is unfit to perform such functions.

House amendment

Extends jurisdiction of the Secretary over safety violations from railroad alone under current law to any person, including a railroad and any manager, supervisor, official, or other employee or agent of a railroad. Provides that any person committing a violation "shall" be assessed the applicable civil penalty by the Secretary, except that a penalty may be assessed against an individual only for willful violations. Provides that action to recover a penalty against an individual may be brought in the judicial district in which individual resides. In addition, gives the Secretary authority, after notice and opportunity for a hearing, to bar an

individual from performing safety-sensitive functions in the rail industry under terms specified by the Secretary where a violation indicates that such individual is unfit to perform such functions.

Conference agreement

House amendment with an amendment. The amendment adopts the Senate provision insulating an individual from liability for a willful violation where the individual acts pursuant to a direct order of an official or supervisor, but adds a requirement that the individual protest such order. The individual is also given the right to document that protest. The documentation of a protest may be in writing or by any other available means of making a record, including the use of electronic or telegraphic devices. The conferees believe that the false, fraudulent, or similarly specious documentation of a protest should be punishable under 18 U.S.C. 1001.

In retaining the word "shall" in section 209(c) of the Federal Railroad Safety Act of 1970 (FRSA), the conferees intend to affirm current law with respect to the question of the Secretary's discretion. No other inference should be drawn from the conferees' action.

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4. PENALTIES FOR VIOLATIONS

Senate bill

Provides penalty of not less than $250 nor more than $10,000 per violation, as the Secretary deems reasonable.

House amendment

Provides penalty of not less than $250 nor more than $10,000 per violation, except where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury, in which case a penalty of up to $25,000 may be assessed.

Conference agreement

House amendment with an amendment. The amendment provides that a fine of up to $20,000 may be assessed where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of or caused death or injury.

The amendment also requires the Secretary within 30 days of enactment to promulgate interim penalty schedules applicable to railroads and individuals to reflect the change in penalty levels provided in the conference agreement. They expect the Secretary to promulgate final penalty schedules within six months of enactment. The conferees view these penalty schedules as a matter committed to agency discretion by law.

5. QUALIFICATIONS OF LOCOMOTIVE OPERATORS; USE OF MOTOR VEHICLE VIOLATIONS HISTORY

Senate bill

Requires the Secretary within 18 months to issue rules, regulations, standards, and orders concerning minimum qualifications for the operators of trains. Requires the Secretary to consider the establishment of an engineer licensing program, uniform minimum qualification standards, and a program of review and approval of each railroad's own qualification standards. Requires the Secretary to report to Congress within 12 months of enactment on activities with respect to this rulemaking.

Permits railroad employees or job seekers who are or would be covered by the Hours of Service Act or who are or would be performing other safety-sensitive functions to request the chief driver licensing official of a state to transmit information from the National Driver Register (NDR) regarding the individual to an employer, prospective employer, or the Federal Railroad Administration (FRA). The employer, prospective employer, or FRA must make the information available to the individual, who will have the opportunity to comment on it in writing. Prohibits access to information in the NDR more than three years old, unless such information relates to revocations or suspensions still in effect. Makes other conforming amendments to the National Driver Register Act of 1982. Provides that no employee shall be disciplined or

sanctioned based on information in the NDR where such employee has completed a rehabilitation program subsequent to the cancellation,

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revocation, or suspension of the person's motor vehicle operator's license.

House amendment

Requires the Secretary within 180 days to issue such rules, regulations, orders, and standards as may be necessary to establish a program for licensing train operators, including engineers, after two years following establishment of such program. Requires licensing to be implemented through a program of review and approval of each railroad's operator qualification standards and to include minimum training requirements and comprehensive knowledge or railroad operating practices and operating rules. Prohibits from holding a license any individual who, within the previous five years (1) has been denied a motor vehicle operator's license by a State for cause; (2) has had a motor vehicle operator's license cancelled, revoked, or suspended by a State for cause; or (3) has been reported to the NDR because of a conviction described in section 205(a)(3) of the National Driver Register Act of 1982.

Grants the Secretary access to NDR for purpose of implementing foregoing provisions. Entitles an individual denied a license on the basis of information in the NDR to an administrative hearing. Provides that

no individual be prohibited from holding a license because of a conviction for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, if such individual has subsequently completed a rehabilitation program established be a rail carrier or approved by the Secretary.

Conference agreement

Senate bill with an amendment. The conference agreement requires the Secretary within 12 months to issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including engineers, after 12 months following the establishment of such a program.

The program shall (1) be implemented through review and approval of each railroad's operator qualification standards; (2) provide minimum training requirements; (3) require comprehensive knowledge of applicable railroad operating practices and rules; (4) require the consideration, to the extent information is available, of the motor vehicle driving record of each individual seeking licensing or certification; (5) permit, based on such driving record, the disqualification of an individual or the granting of a license or certification conditioned on such terms as the Secretary may prescribe; (6) require the individual to request the chief driver licensing official of each State in which he or she has, within the previous five years, held a motor vehicle operator's license to provide information to his

or her employer or prospective employer, or to the Secretary, as the Secretary may determine, with respect to such individual's driving record; and (7) require the individual to make the request provided for in section 206(b)(5) of the National Driver Register Act of 1982 for information to be transmitted to his or her employer or prospective employer, or to the Secretary, as the Secretary may determine.

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The conference agreement also incorporates the Senate bill's amendment to the National Driver Register Act of 1982, but modifies it by limiting its scope to persons seeking a license or certification to operate a locomotive and by making other technical changes. The employer, prospective employer, or Secretary are authorized to receive the information from the NDR and shall transmit such information to the individual, who shall have the opportunity to comment on it in writing. Such comment shall be included in any record or file maintained for purposes of licensing or certification.

The conferees intend that the Secretary shall make every effort to eliminate or minimize any duplication of effort involved in obtaining the information prescribed by the provisions of this section.

The Secretary is given authority to waive the requirements with respect to consideration of the driving record of any individual or class of individuals determined not to be currently unfit to operate a locomotive. However, given the gravity of alcohol and

drug-related driving offenses, waivers may not be granted to individuals with alcohol or drug-related offenses in their driving history unless such individuals have successfully completed a rehabilitation program established by a railroad or approved by the Secretary.

Individuals who have successfully completed rehabilitation shall not be denied licensing or certification on the basis of a drug or alcohol-related driving conviction that occurred prior to such rehabilitation, but such individuals' licenses or certifications may be conditioned as the Secretary deems appropriate.

An individual whose license or certification is conditioned or denied on the basis of that individual's driving history shall be entitled to an administrative hearing under section 202(b) of the FRSA.

The conferees do not intend that in order to be eligible for licensing or certification an individual must obtain a motor vehicle operator's license if the individual has never had one or if the individual relinquished or failed to renew such a license in the past for reasons unrelated to his or her driving record.

6. EMPLOYEE DISCRIMINATION

Senate bill

Provides expedited procedures for resolution of disputes, grievances and claims before an Adjustment Board in proceedings under section 212(c) of the FRSA. Provides for award of reasonable damages, including

punitive damages, of up to $10,000 where discrimination takes a form other than discharge, suspension, or reduction of pay and no other remedy is available.

House amendment

Provides expedited procedures and compensation as in Senate bill, except that compensation may be up to the equivalent of one year's pay. Also prohibits the Secretary from disclosing the name of any employee who provides information with respect to any alleged violation, except with the employee's written consent or to the Attorney General when a matter is referred for judicial enforcement.

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Conference agreement

House amendment with an amendment. The amendment sets the level of compensation available under the circumstances described in the bill at up to $20,000.

7. NORTHEAST CORRIDOR IMPROVEMENT PROJECT (NECIP)

Senate bill

Amends section 704(a)(1) of the 4R Act to add authorization for several projects and activities on the main line of the Northeast Corridor and related facilities.

House amendment

No provision.

Conference agreement

Senate bill with technical amendments.

8. JURISDICTION OVER HIGH-SPEED RAIL

Senate bill

Clarifies Secretary's jurisdiction in rail safety area by defining "railroad" to include all forms of non-highway ground transportation that run on rails or electromagnetic guideways, except for rapid transit operations within an urban area that are not connected to the general railroad system of transportation. The term "railroad" includes certain commuter or other short-haul rail passenger service and intercity high-speed ground transportation systems without regard to whether they use new technologies not associated with traditional railroads. Makes other technical changes in FRSA.

House amendment

No provision.

Conference agreement

Senate bill with a technical amendment.

9. ENFORCEMENT OF SECRETARY'S ACTIONS

Senate bill

Gives U.S. district courts jurisdiction to enforce subpoenas, orders, or directives of the Secretary.

House amendment

Similar provision.

Conference agreement

Senate bill with technical amendments.

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10. USER FEE STUDY

Senate bill

Requires Secretary within six months to report to Congress on the need for and feasibility of imposing user fees as a source of funding for the federal rail safety program.

House amendment

No provision.

Conference Agreement

No provision.

11. AUTOMATIC TRAIN CONTROL (ATC) AND

RELATED SYSTEMS

Senate bill

Requires Secretary within 180 days to issue rules, regulations, standards, and others requiring pre-trip certification that test of automatic train stop, train control, or cab signal apparatus was properly performed, and prescribes record-keeping requirements.

Requires Secretary within 30 days to issue rules, regulations, standards, and others requiring use of ATC on all trains operating in the Northeast Corridor (NEC) by no later than December 31, 1990. Requires Secretary to report to Congress by January 1, 1989, on the progress of this effort and to detail any proposals for modification of this ATC requirement.

House amendment

Requires installation of ATC on all trains operating after April 1, 1990 on the main line or a specified feeder line of the NEC. Permits Secretary to extend this deadline to July 1, 1990 if compliance by April 1, 1990 is found to be impracticable.

Requires Secretary to undertake a study of the advisability and feasibility of requiring ATC on each rail corridor on which passengers and hazardous materials are carried.

Conference agreement

Senate bill with an amendment. The amendment (1) requires promulgation of the pre-trip certification rules within 90 days; (2) adopts the House provision on installation of ATC on the NEC and (3) provides for the ATC study in the House bill, with a report to be submitted to Congress by April 1, 1990. By referring to ATC, the conferees do not intend to preclude the use or consideration of new and advancing technology with regard to ATC.

12. EVENT RECORDERS

Senate bill

Provides that Secretary shall require the installation and use of event recorders on freight trains within one year after enactment.

House amendment

Requires Secretary within 180 days to conduct and complete an inquiry into whether to require that all trains be equipped with

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event recorders. Provides that the Secretary shall report results of inquiry to Congress and initiate a rulemaking proceeding if Secretary recommends that event recorders be required. Also defines term "event recorder".

Conference agreement

Senate bill with an amendment. The conference agreement requires the Secretary within 18 months to issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within one year after issuance. The Secretary is given discretion to extend the deadline for equipping trains by an additional six months if compliance within one year is found to be impracticable. The conference agreement also adopts the House definition of "event recorder" with a modification specifying time and signal indication as examples of those functions that the Secretary may consider necessary to record.

13. NEC SAFETY COMMITTEE

Senate bill

Requires Secretary within 30 days to establish an NEC Safety Committee and to appoint representatives of specified interests. Secretary is to consult with Committee on safety improvements in the NEC. Requires Secretary within 90 days to convene a meeting of NEC rail carriers for purpose of reducing through freight traffic on NEC passenger lines. Provides for annual report from Secretary to Congress, with recommendations for legislation.

House amendment

No provision.

Conference agreement

Senate bill with an amendment. The amendment (1) adds a representative of rail labor to the Committee; (2) limits the participation of freight carriers on the Committee and in the meeting to be convened by the Secretary to those operating more than 150,000 train miles per year on the main line of the NEC; (3) provides for only one report, to be issued within one year from the date of enactment; and (4) deletes the requirement for legislative recommendations.

14. TECHNICAL AMENDMENT TO FRSA

Senate bill

Repeals requirement for one-time report that has since been completed and submitted.

House amendment

No provision.

Conference agreement

Senate bill.

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15. AMENDMENTS TO OLDER SAFETY ACTS

Senate bill

Makes multiple technical changes to the Safety Appliance Acts, Locomotive Inspection Act, Accident

Reports Act, Hours of Service Act, and Signal Inspection Act to modify or delete outdated references and language and to conform provisions to the new liability and penalty provisions in section 3 of the Senate bill.

House amendment

No provision.

Conference agreement

Senate bill with amendments. The amendments conform the language and intent of the Acts specified above to the language and intent of the new liability and penalty provisions in section 3 of the conference report.

16. GRADE CROSSING PROVISIONS

Senate bill

Requires the Secretary within six months to institute a rulemaking to provide for the safety of highway travelers and pedestrians who use railroad grade crossings at points where trains operate through densely populated college campuses.

House amendment

Addresses three areas of grade crossing safety:

(1) Requires FRA to establish certain demonstration projects for the purpose of

evaluating whether various specific measures would reduce accidents;

(2) Authorizes the appropriation of $1 million from the sums authorized in section 214 of the FRSA for improvements in grade crossing safety;

(3) Requires the Secretary within 180 days to issue such rules, regulations, orders, and standards as may be necessary to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

Conference agreement

House amendment with an amendment. The amendment provides 12 months for the signal rulemaking. The amendment also authorizes the appropriation of $1 million for improvements in grade crossing safety other than the demonstration projects otherwise provided for, without regard to sums authorized in section 214. The conferees intend that these funds be used for the installation of active warning systems.

17. RAIL PASSENGER SERVICE AMENDMENTS

RAIL SAFETY IMPROVEMENT ACT
P.L. 100-342

Senate bill

Makes several technical and other amendments to the Rail Passenger Service Act (RPSA).

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House amendment

Addresses three areas of safety with respect to certain Amtrak facilities:

(1) Allows Amtrak or the owner of any facility which presents a danger to Amtrak employees, passengers, or property to petition the Secretary for relocation assistance or other remedial measures. If such assistance is deemed appropriate, the Secretary may recommend to Congress that funding for that purpose be authorized.

(2) Authorizes the appropriation of $1 million from sums authorized under section 214 of the FRSA to permit Amtrak or the owner or operator of certain Amtrak stations to bring such stations into compliance with State or local codes.

(3) Provides Amtrak with certain remedies in the event of a breach by a rail carrier or line owner having a contractual obligation to permit Amtrak to operate service on its line and to maintain such line in a condition suitable for such operation.

Conference agreement

Senate bill with an amendment. The amendment makes certain technical changes in the Senate bill's RPSA provisions. It also incorporates the provisions of the House amendment pertaining to dangerous Amtrak facilities and to Amtrak stations in violation of local codes, with a further amendment providing a separate authorization and ensuring Amtrak's concurrence and participation when funds are sought.

18. MAINTENANCE OF WAY OPERATIONS

Senate bill

Requires the Secretary within one year to issue such rules, regulations, orders, and standards as may be necessary for the protection of maintenance of way employees, including standards protection of maintenance of way employees, including standards for bridge safety equipment and requirements relating to instances when boats shall be used. Amends Hours of Service Act to include maintenance of way workers within the term "employee" for purposes of section 2(a)(3) of that Act. Requires the Secretary within one year to amend 49 CFR Part 218 to apply blue signal protection to on-track vehicles where rest is provided.

House amendment

Identical, except that House provision also requires issuance of standards for motor vehicles used by maintenance of way employees which provide that the employees shall ride in a separate compartment from tools and hazardous materials carried in the vehicle.

Conference agreement

Senate bill. The Senate bill and the House amendment both would amend section 2(a)(3) of the Hours of Service Act by requiring that sleeping quarters provided for maintenance of way employees are clean, safe, and sanitary, and afford such employees an opportunity for rest free from interruption caused by noise under

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the control of the railroad. Some carriers have argued that applying the existing FRA noise guideline governing sleeping quarters, which was adopted prior to maintenance of way coverage, would cause the elimination of camp and bunk cars in maintenance of way operations. The conferees do not intend this result.

Thus, if the carriers can present persuasive evidence to the FRA that the existing guideline would have this unintended effect, the conferees would expect the FRA to review the guideline with respect to maintenance of way camp and bunk cars to determine, first, whether the carriers' claims are in fact correct; second, whether the problem, if any, is best handled through a change in the noise standard itself or through a case-by-case review of specific situations, with waivers granted and conditioned as appropriate; and third, whether reasonable alternatives exist so that a carrier's claim should not override maintenance of way employees' legitimate concerns and need for

uninterrupted rest. The conference agreement postpones the effective date of the noise provision for six months.

19. TAMPERING WITH SAFETY DEVICES

Senate bill

No provision.

House amendment

Requires the Secretary within 90 days to issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices, such as cab whistles, event recorders, and similar equipment. Prescribes penalties for tampering, as well as for operating or permitting to be operated a train on which such devices have been tampered with or disabled.

Conference agreement

House amendment.

20. DISPATCHER TRAINING

Senate bill

No provision.

House amendment

Requires the Secretary within 180 days to conduct and complete an inquiry into whether training standards are necessary for dispatchers. The results of the inquiry are to be reported to Congress together with the Secretary's recommendations. Rulemaking proceedings shall be initiated if the Secretary recommends that such standards are necessary.

Conference agreement

House amendment.

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21. ACCIDENT REPORTS

Senate bill

No provision.

House amendment

Permits each employee whose error is alleged in an accident or incident report as a cause of an accident or incident to include in such report a statement by such employee explaining any factors the employee alleges contributed to the accident or incident.

Conference agreement

House amendment. The conferees anticipate that FRA will issue regulations implementing this provision that will allow for submission of such a supplementary

statement by an employee identified in the railroad's report without delaying the submission of the railroad's accident or incident report, which must be submitted within 30 days after the end of the month in which the accident or incident occurred. The conferees further anticipate that the FRA will file any supplementary statement it receives with the appropriate report from the railroad.

22. FENCING OF RAIL YARDS

Senate bill

No provision.

House amendment

Requires the Secretary within one year to issue such rules, regulations, orders, and standards as may be necessary to require the fencing of rail yards in heavily populated areas so as to prevent or deter injury of persons not employed by the rail carrier.

Conference agreement

No provision.

23. LOCAL SPEED ENFORCEMENT

Senate bill

No provision.

House amendment

Permits the Secretary to enforce speed regulations with respect to any carrier on the basis of information supplied by duly authorized agents of local government as if such information were supplied by Federal agents.

Conference agreement

No provision.

JOHN D. DINGELL,
THOMAS A. LUKEN,
JIM SLATTERY,
NORMAN F. LENT.

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BOB WHITTAKER
Managers on the Part of the House.

FRITZ HOLLINGS,
J. J. EXON,
BROCK ADAMS,
JOHN C. DANFORTH,
BOB KASTEN,
Managers on the Part of the Senate.

(3)

Supreme Court, U.S.
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No. 93-1506

IN THE

Supreme Court of the United States

October Term, 1993

THOMAS L. MICKLER,
Petitioner,

vs.

THE NIMISHILLEN & TUSCARAWAS RAILWAY COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PHILIP E. HOWES
Counsel of Record
RICHARD S. MILLIGAN
THOMAS R. HIMMELSPACH
VOGELGESANG, HOWES, LINDAMOOD & BRUNN
400 Tuscarawas Street, West—Suite 200
P.O. Box 20870
Canton, Ohio 44701-0870
(216) 456-3483

Attorneys for Respondent

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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RULE 29.1 STATEMENT

Respondent, Nimishillen & Tuscarawas Railway Company, is a wholly-owned subsidiary of Republic Engineered Steel, Inc.

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No. 93-1506

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Supreme Court of the United States

October Term, 1993

THOMAS L. MICKLER,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case involves a personal injury claim for damages by an employee of Nimishillen & Tuscarawas Railway Co. (N&T) against N&T, based on an allegation of negligence, pursuant to 45 U.S.C. §51 which provides for Federal Employers' Liability Act (FELA) claims against common carrier railroads.

Petitioner, Thomas L. Mickler (Mickler), urges this Court to expand the jurisdiction of United States district courts and allow actions by railroad employees against private, in-plant railroads under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§51, *et seq.* FELA provides a cause of action only to employees of common carrier railroads, stating:

> "Every *common carrier* by railroad while engaging in commerce between any of the several States or Territories ... shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce..., for such injury or death resulting in whole or in part from the negligence of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, ... or other equipment." 45 U.S.C. §51. (emphasis added)

In *Wells Fargo & Co. v. Taylor,* 254 U.S. 175, 51 S. Ct. 93, 65 L. Ed. 205 (1920), the Court held that a common carrier railroad that is subject to FELA liability is one that carries "for the public ..." *Id.* at 187-88, 41 S. Ct. at 98. Under that rule, the Sixth Circuit Court of Appeals held that a private, in-plant railroad that carries only for a single business is not a common carrier railroad under 45 U.S.C. §51, of FELA. *Kieronski v. Wyandotte Terminal Rd. Co.,* 806 F.2d 107, 109 (6th Cir. 1986).

N&T moved for summary judgment, based on evidence that it was not a common carrier railroad, and, therefore, not subject to FELA. The evidence showed it was a wholly owned subsidiary of Republic Engineered Steel, Inc. (Republic), and that it transported goods only for Republic.

The trial court dismissed the case on summary judgment, holding that on the evidence properly before it reasonable minds could only conclude that N&T was a private, in-plant railroad, and was not subject to FELA liability. The Sixth Circuit Court of Appeals affirmed the judgment, holding there was no evidence that N&T was a common carrier railroad subject to FELA liability.

SUMMARY OF ARGUMENT

Mickler argues that the Court should eliminate the express limitation in 45 U.S.C. §51 that only common carrier railroads are subject to FELA. The three steps to his argument are simple:

> (1) Congress enacted the Federal Railroad Safety Improvement Act of 1988 (RSIA)[1], amending the earlier railroad safety acts[2] to apply to all railroads, whether or not they were common carriers;
>
> (2) FELA provides a private right of action to railroad employees injured in the course of employment, and the right is affected by the railroad safety acts; and
>
> (3) Congress, therefore, impliedly intended that FELA should apply to all railroads, whether or not they were common carrier railroads, when it enacted RSIA.

Mickler's argument fails for two reasons. First, district courts have only such jurisdiction as Congress confers expressly, and jurisdiction cannot be raised through implication from new legislation where Congress has left intact an existing express limitation on such jurisdiction. Second, the premise of the argument is wrong: RSIA does not show a Congressional intent that private, in-plant railroads be subject to federal railroad safety legislation. Congress allowed the Secretary of the Department of Transportation to decide whether in-plant railroads would come under RSIA, and the Secretary has applied the legislation only to common carrier railroads.

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[1] Pub. L. No. 100-342, 102 Stat. 624.

[2] The Locomotive Boiler Inspection Act (LBIA), 45 U.S.C. §§22-24; The Railroad Safety Appliance Act (RSAA), 45 U.S.C. §§1, *et seq.*; The Accident Reports Act, 45 U.S.C. §§38-43; The Signal Inspection Act, 49 U.S.C. App., §26, *et seq.*

REASONS FOR DENYING THE WRIT

The Petition, Which Seeks To Have The Court Expand The Federal Question Jurisdiction Of District Courts, Should Be Denied Because Congress Has Not Provided For Such An Expansion, Either By Express Statement Or By Implication.

A. The jurisdiction of United States District Courts arises only if the U.S. Constitution or Congress confers jurisdiction expressly, and cannot be otherwise inferred.

Mickler asks the Court to expand the federal question jurisdiction of district courts to include under FELA the work injury claims of employees of railroads that are not common carriers. He argues the Court should announce such a rule, based on what he perceives to be the implied intent of Congress that FELA jurisdiction should be so extended.

The jurisdiction of federal courts is limited, and arises only by express provision in the Constitution or by Congress. Any limitations Congress has provided on such jurisdiction must be upheld. As the Court held in *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365, 374, 98 S. Ct. 2396, 2403, 57 L. Ed. 2d 274 (1978):

> "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded."

In *Shamrock Oil & Gas Corp. v. Sheets,* 313 U.S. 105, 615 S. Ct. 868, 85 L. Ed. 1214 (1941), the Court held that statutory limitations on federal court jurisdiction are to be strictly construed.

Congress has conferred federal court jurisdiction over FELA claims, but only to the extent that those claims are allowed by statute. Congress left in place the

common carrier limitation to FELA liability in 45 U.S.C. §51. The plain language of the statutory limitation must be upheld. If Congress intended all railroads to be subject to FELA, whether or not they were common carriers, it would have amended the FELA statute to show that intent.

B. Congress did not intend that private in-plant railroads would be subject to liability under the Federal Employers' Liability Act. 45 U.S.C. §§51, *et seq.*, by enacting the Federal Railroad Safety Improvement Act of 1988 (RSIA).

The premise of Mickler's argument is that Congress intended private, in-plant railroads to be subject to the federal railroad safety acts when it enacted RSIA. The railroad safety acts, however, do not affect in-plant railroads.

While the railroad safety acts confer on the Secretary of the Department of Transportation authority to enforce the acts[3], the Secretary has delegated that authority to the Federal Railroad Administration (FRA). While the FRA has statutory jurisdiction over all railroads under RSIA (*see, e.g.*, 45 U.S.C. §16, as amended), FRA does not exercise jurisdiction to the full extent permitted by statute. As explained in 49 C.F.R. Part 209, App. A:

> "Based on its knowledge of where the safety problems were occurring at the time of its regulatory action and its assessment of the practical limitations on its role, FRA has, in each regulatory context, decided that the best option was to regulate something less than the total universe of railroads."

[3] *See, e.g.* 45 U.S.C. §15, giving the Secretary the duty to enforce the Safety Appliance Act.

FRA has excluded in-plant railroads from regulation under the safety acts. For example, the C.F.R. part relating to Railroad Safety Appliance Standards provides:

> 49 C.F.R. §231.0(b)
>
> "This part does not apply to:
> (1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation."[4]

Mickler argues that the Court should extend FELA liability to match the reach of the railroad safety acts (Petition, p. 15). However, since in-plant railroads are exempt from the federal regulation, Mickler's argument is baseless.

Further, the legislative history to RSIA explains the intent of Congress that the act would not affect FELA. The Senate Report explains that while RSIA authorizes the FRA to take direct enforcement actions against railroads, "[i]t would not otherwise affect private proceedings as between railroads and their employees." Sen. Rep. No. 100-153 §3, cited in 1988 U.S.C.C.A.N. at 701. Congress did not intend RSIA to alter the scope of liability under FELA.

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[4] *See, also,* 49 C.F.R. §215.3 (Railroad Freight Car Safety Standards); 49 C.F.R. §218.3(b)(1) (Railroad Operating Practices); 49 C.F.R. §229.3 (Railroad Locomotive Safety Standards).

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

PHILIP E. HOWES
Counsel of Record
RICHARD S. MILLIGAN
THOMAS R. HIMMELSPACH
VOGELGESANG, HOWES, LINDAMOOD
& BRUNN
400 Tuscarawas Street, West—Suite 200
P.O. Box 20870
Canton, Ohio 44701-0870
(216) 456-3483

Attorneys for Respondent